Industrial Security

JANUARY, 1961

Vol. 5, No. 1

Richard S. Reynolds, Jr.
President
Reynolds Metals
Company

OFFICIAL PUBLICATION
OF THE
American Society
for
Industrial Security

REYNOLDS METALS COMPANY

OFFICE OF THE PRESIDENT — RICHMOND, VIRGINIA

To Members of the American Society for Industrial Security:

In American industry, the industrial security officer has attained professional status in recent years. A properly trained, well qualified and widely experienced security staff now is recognized as a necessity by many industries and businesses. Certainly it speaks well of you gentlemen who fill these important posts in all sectors of the American economy and government that you have recognized the personal nature of the challenge which confronts you and that you have capitalized upon the opportunity given you to better serve your employers and to raise the standards of your profession by founding ASIS. In no group of men does a more profound trust reside or a greater responsibility lie.

At Reynolds Metals Company we have followed with interest the growth of your Society and its increasing stature. We are proud that our own industrial security staff has been in the forefront of your endeavor.

I am particularly pleased at this personal opportunity to congratulate you and to wish for American Society for Industrial Security every success in the years ahead.

Richard S. Reynolds, Jr.
President

Industrial Security

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EDITOR'S NOTE — MR. RICHARD C. BOND, NATIONAL CHAIRMAN OF THE ASIS PUBLICATIONS COMMITTEE, CONSIDERS THIS ARTICLE TO BE "... BOTH COMPLEMENTARY AND SUPPLEMENTARY TO **AN ANALYSIS OF EXECUTIVE ORDER 10865,** BY TIMOTHY J. WALSH, PUBLISHED IN INDUSTRIAL SECURITY, APRIL, 1960."

NEW PROCEDURES FOR INDUSTRIAL SECURITY HEARINGS

ROBERT W. WISE
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B.S., 1956, McPherson College

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A.B., 1956, Pembroke College in Brown University

I. Introduction

Confidential information, which cannot be disclosed without endangering national security, has been involved in every program designed to test the loyalty of employees working with national secrets. Since World War II and the ensuing "cold war", elaborate Government security programs have been developed, designed to protect the internal security of the United States against sabotage and espionage from foreign powers.[1]

No program so dramatically pointed up the problems involved as the past Industrial Personnel Security Program[2] which was used to determine the eligibility of an employee of a government contractor to have access to classified defense information. Frequently the determination was made on the basis of information obtained from confidential sources, both undercover agents and casual informants.[3] The suspect employee was usually not made aware of the adverse evidence, nor given an opportunity to confront his accusers.[4]

This procedure raised an obvious conflict between the Government's interest in protecting its confidential information, and the interest of the individual, in terms of procedural due process of law.

[1] Federal Civilian Employees Loyalty Program, 64 Stat. 476 (1950), 5 U.S.C. § 22-1 (1958); Industrial Personnel Security Review Regulation, 32 C.F.R. § 67 (Supp. 1959); AEC Security Program, Atomic Energy Act, 68 Stat. 941 (1954), as amended, 42 U.S.C. § 2163 (1958); Port Security Program, Magnuson Act, 64 Stat. 427 (1950), as amended, 50 U.S.C. § 191 (1958), 33 C.F.R. § 121 (Supp. 1959).

[2] 32 C.F.R. § 67 (Supp. 1959). The program affected some 3,000,000 employees in private industry. Brown, Loyalty and Security 179-80 (1958).

[3] *Report of the Commission on Government Security*, S. Doc. No. 64, 85th Cong., 1st Sess. 237 (1957) [hereinafter cited as *Commission Report*]. The Commission, consisting of six persons from each of the two major parties; selected equally by the President, President of the Senate, and the Speaker of the House, was created in 1955 pursuant to Pub. L. No. 304, 84th Cong., 1st Sess., 69 Stat. 595. Loyd Wright was Chairman of the Commission.

[4] 32 C.F.R. § 67.4-5(e) (Supp. 1959).

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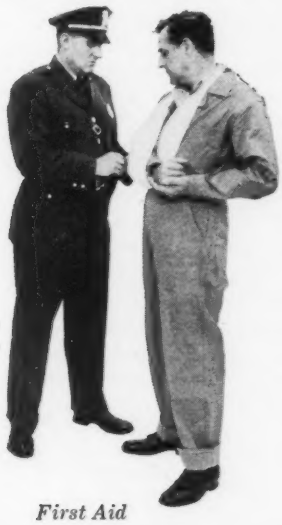

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An Instrumental Approach To Applicant Evaluation

By CARROLL S. PRICE
Assistant Professor
Police Science and Administration
Long Beach State College
Long Beach 4, California

In recent years we have witnessed an increase in concern in the area of personnel administration regarding the evaluation of applicant qualifications. Organizations have experienced many difficult incidents involving employees, many of whom should never have been brought into the company or agency in the first place. Somewhere along the line, the personnel system has proven inadequate, either in the selection process or during the probationary period. Some individuals with gross personality and character defects have been slipping past the normal screening devices that are set up by the personnel departments to identify and eliminate such individuals.

In the past these screening devices have consisted primarily of interviews, evaluation of application forms, background investigations, and psychological examinations. These devices have proven adequate in many instances, but have recently become somewhat insufficient because of the ever-increasing scope of the operation, greater security needs, and other factors. Frequently, the personnel office is faced with the problem of evaluating many more applicants than limited personnel and facilities will allow. Many personnel administrators have expressed their desire for some reliable method of evaluating candidates which will expedite the process.

The primary purpose of this paper is to outline one method of determining the individual's suitability for employment in terms of character, emotional stability, loyalty, honesty, and other traits of personality. In the past this subjective criteria has usually been determined (if it was determined) through extensive psychological evaluations conducted by a competent psychiatrist or psychologist. Such evaluations are of great value to the personnel administrator, but the fact that these highly educated and experienced individuals are not available to every organization is a primary stimulus for this presentation. Another influencing factor is closely related to the limitations of the background investigation. Even though such investigations are essential in many applicant evaluations, they are expensive and time consuming. In some instances if applicants are denied employment until the investigation is complete, several adverse results may occur: applicants may become discouraged and obtain employment elsewhere because of the delay, or, some other organization may make an acceptable offer of employment which is accepted. Background investigations do not always reveal vital information regarding personality defects because of the reluctance of persons, who are interviewed, to reveal such facts. Other limitations could also be pointed out.

I want to make it clear that the method of evaluation suggested here is not proposed as a substitute for the methods of evaluation mentioned above. Rather, this method could be used as a supplement to the psychological evaluation and the background investigation. Some agencies have used this technique for an initital evaluation of candidates, followed by a more thorough background check after employment (while the employee is still on probation).

The technique described in this paper involves the use of an instrument sometimes called a lie detector, a polygraph, or a deceptograph. Several acceptable instruments are now in use throughout the country. The two principal manufacturers of these devices are located in Chicago: The C. E. Stoelting Co. (Deceptograph) and Associated Research (Keeler Polygraph). Several other companies also manufacture "lie detectors," but many do not incorporate the three channel mechanism which records heart action, respiration and galvanic skin response. This is considered by many to be a minimum requirement for such instruments.

In applicant testing a polygraph could be of great value in indicating areas of excess emotion. A series of questions, such as those outlined below, could be asked during a deceptograph examination, which might be quite revealing. During the past few months

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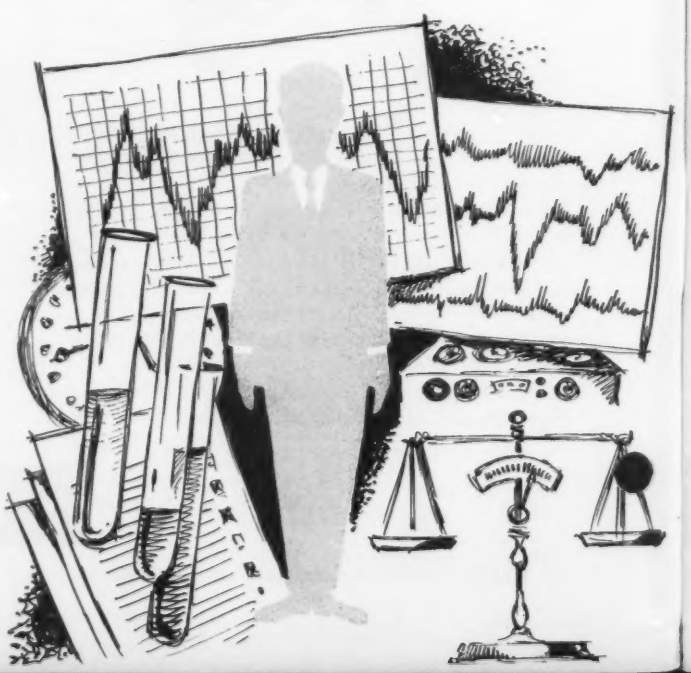

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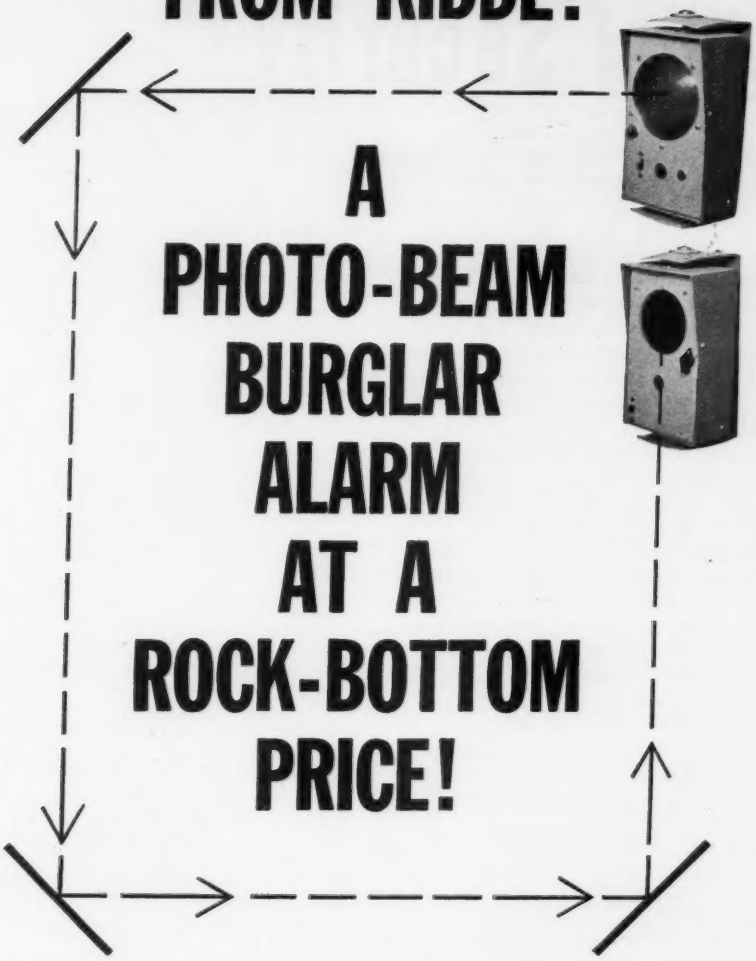

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Scientific Training for Industrial Security?

By

DR. A. C. GERMANN
Professor of Police Science
Head, Department of Police Science
and Administration
Long Beach State College
Long Beach 4, California

"Scientific Training for Industrial Security" is an anomalous phrase, and yet somehow an applicable title for a discussion of higher education and professionalization.

Both "scientific training" and "industrial security" are subject to misinterpretation. To some, "scientific training" implies an ordered body of knowledge which may be mastered by high capacity people, and which is transmitted by highly qualified instructors; to others, "scientific training" connotes *any material* which may be presented *to any individual by anyone handy*.

To some, "industrial security" refers to a vocation peopled by dedicated individuals possessing great personal integrity and capacity; to others, "industrial security" refers to the sinecures of those who have fled from governmental positions to private industry where limited ability and motivation is a lesser handicap. Just as there are those who have a low opinion of "industrial security" and a high regard for "scientific training"—I would point out to you that there are some who hold a dignified concept of "industrial security," but an unrealistic concept of "scientific training."

Certainly any attempt to professionalize *must* include some systematized effort to collect, identify, categorize, develop, present and preserve the principles and data which form the core of industrial security art *and* science.

We would respectfully suggest that the following functions and activities constitute the greater part of the *Industrial Security* area:

I. Industrial Security *Administration*
   - A. Organizational Unit Structures
   - B. Management Policy and Procedure
   - C. Personnel Management
   - D. Budget Preparation
   - E. Planning and Research
   - F. Public Relations
   - G. Equipment and Facilities
   - H. Supply and Maintenance
   - I. Records and Reports
   - J. Communications

II. Industrial Security *Operations*
   - A. Industrial Police Operations
   - B. Industrial Fire Operations
   - C. Industrial Safety Operations
   - D. Government Contract Security Operations
   - E. Retail Store Security Operations
   - F. Transportation Industry Security Operations
   - G. Insurance Company Security Operations
   - H. Private Policing Operations

Thus, in our opinion, *professional* industrial security encompasses far *more* than government contract security operations—which, to us, is a limited area of the vocation. We would suggest that the professional industrial security man should be able to administer *all* industrial and commercial functions which relate to the safety and protection of company and customer; and that to do so properly he (1) be professionally educated, (2) be professionally experienced, and (3) be placed at a level of authority corresponding to his heavy responsibilities.

There are now over ten institutions of higher learning which offer programs in the industrial security area, among which the most prominent are:

El Camino College, California
Fresno State College, Fresno, California
Illinois Institute of Technology, Chicago, Illinois
Lozola University, Westchester, California
Michigan State University, East Lansing, Michigan
Sacramento State College, Sacramento, California
State College of Washington, Pullman, Washington
Texas A and M College, College Station, Texas
University of California, Berkeley, California
University of Southern California, Los Angeles, California

Now what is being done in these programs of industrial security education? What is the quality of curricula, staff, students? Are these programs teaching a fornt and practice of industrial security which

(*Continued on page* 31)

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Industrial Defense and Disaster Preparedness at General Dynamics' Electric Boat Division

Talk given by Eric L. Barr, Jr., on October 26, 1960, to the class attending the Industrial Plant Protection Course put on by the Massachusetts Civil Defense Agency, at the Massachusetts Civil Training Center, located at Topsfield, Massachusetts.

Mr. Barr is the Industrial Security Manager, Electric Boat Division, General Dynamics Corporation, and Chairman of the Board of Directors, American Society for Industrial Security.

ERIC L. BARR, JR.

Planning for the survival of industry in the event of disaster is the responsibility of the entire management team. It is particularly important to the security director, because one of his functions is the safeguarding of life and property.

Many think of "industrial security" only as protection of the plant from theft, espionage, and sabotage by means of fences and guard forces, loyalty investigations of employees, and control of classified information. This point of view is quite natural, since these activities are obvious to everyone. A more accurate picture of industrial security, however, must include *every* activity intended to safeguard life, limb, property, information, and production. Within this broader scope lies the security director's responsibility for preparing to cope with major industrial emergencies and disasters.

Emergencies include accidents which can cause fires, explosions, and panic. They include natural disasters such as floods, tornadoes, electrical storms, and one with which we at Electric Boat are all too familiar—hurricanes. The last category depends upon the world political picture—attack, either by direct military action or by sabotage or espionage.

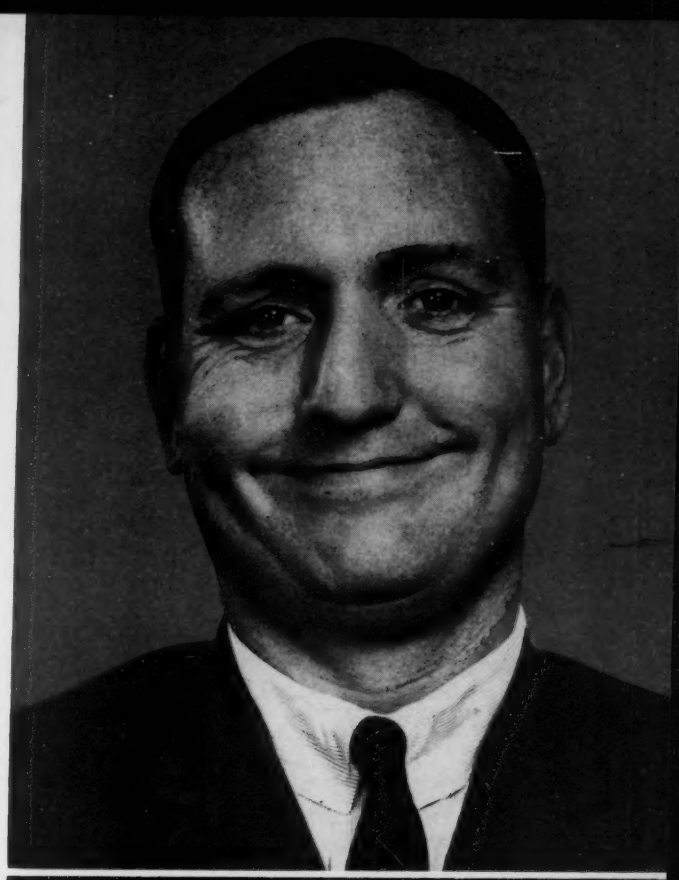
The by-laws for the American Society for Industrial Security, the professional society for security directors and supervisors, state that "industrial security" shall include and be synonymous with "disaster and emergency controls." The society clearly recognizes that the security director is vitally concerned with all the emergencies I have just enumerated. In recent years, security directors have been presented with a problem of staggering magnitude by the threat of new weapons with horrendous destructive power. Industrial security directors, together with the rest of the management team, must use all their knowledge and skill to prepare for this extremely unpleasant possibility.

It is here that they can draw upon the National Program for Industrial Survival, a part of the National Plan for Civil Defense and Defense Mobilization with which you are all familiar. But the Program is not a one-way street The Office of Civil and Defense Mobilization prepared the plan in cooperation with industrial people—there was and still is a constant give and take of advice and assistance between OCDM and industry. One example of this cooperation is my being here today.

The plan for industrial survival is clearly the responsibility of the many security directors in industry all over the country. They are in a position to implement the program. Some steps the security director can take himself. Others are beyond his authority and he can only bring them to the attention of management, both above his own level and below it but out of his range. He must always take the initiative in civil defense programs. At times, and in many companies, he also provides the leadership, direction, and coordination needed in planning, organizing, and preparing for emergencies. During emergencies he must serve as the disaster director for his company

(*Continued on page* 12)

"Secret Spy" or



"Regular Guy"?

The "regular guy" could be as much a security risk as the more obvious "spy type", without even realizing it!

If he's financially irresponsible . . . lacks healthy mental and moral attitudes . . . if there is anything in his history that could affect his job performance, *he is as much a security risk as the avowed spy.*

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or at least assist top management by acting as coordinator of survival activities. The steps the security director should take to prepare for catastrophies depend somewhat on his particular situation—local conditions, possible disasters, the extent of his authority. In an ideal situation, he can do many things.

He can establish liaison and mutual assistance agreements with local, state, and national civil defense officials; with other departments of government; and with other industrial organizations.

He can prepare and distribute disaster plan manuals and handbooks.

He can prepare to assess and report the nature and extent of damage.

He can spell out company and plant responsibilities for disaster preparedness and emergency leadership.

He can organize and train specific employees for emergency services.

He can instruct all employees in survival procedures through exercises and drills.

He can establish an emergency plant warning and communications system.

He can establish a central control station.

He can develop an emergency shutdown procedure.

He can designate emergency reporting points for disaster workers.

On a slightly different tack, he can develop evacuation and shelter plans.

He can also set up prevention systems for sabotage and espionage.

He can plan measures to deal with clandestine and unexploded ordnance.

There are a number of other vital precautions that should be taken, but which are the responsibility of people on the top level of corporation or plant management. These steps are outside the security director's sphere of direct action, but he can be the impetus which gets the ball rolling. These precautions are intended to insure that each major function of the plant or corporation continues in the face of disaster. They include:

Planning for continuity of management.

Establishing alternate corporate and plant headquarters.

Deconcentrating critical production and dispersing new plants.

Adapting corporate by-laws and administrative regulations for emergency operations.

Protecting essential records by duplication and safe storage at alternate points.

Developing emergency financial procedures.

Outlining plans for repairing equipment and restoring production.

Readying a placement and transfer plan to use employees effectively in emergencies.

Perhaps the best way for me to give you a picture of what industry is doing to handle disasters is to cite an example—to describe our set-up at General Dynamics Corporation's Electric Boat Division, where I am Industrial Security Manager.

Our emergency plant protection plan has been developed to make the plant as self-sufficient as possible in time of emergency. The reasons for this are readily apparent. We can handle strictly internal disasters more quickly than outsiders, and in a general emergency, local service facilities will have enough to do.

This is not to say that we reject outside aid or requests for help. We have mutual assistance agreements with local government, industries, and military installations. I will have more to say about these agreements a little later on.

The emergency organization at Electric Boat is well established, and I might add, well tested. An Emergency Directorate supervises all emergency operations from a Central Control Station set up in the Plant Engineer's Office. The Directorate is under the authority of the Assistant General Manager, who is directly under the President and General Manager of the Division. The Directorate consists of four people who represent four different departments: administration, operations—which is our production department—, plant engineering—which is our maintenance department—, and security.

Reporting to the Directorate and controlled by them, are the people who direct segments of the emergency activities: an emergency communications director, fire chief, safety warden, medical director, guard chief, security officer, engineering chief, welfare director, and transportation chief.

The organization changes for each of the three shifts, in that different people fill the various slots. For the first shift, the positions are filled for the most part by people who have identical jobs under normal conditions.

With this comprehensive organization, we can deal effectively with the five kinds of emergencies which may occur at Electric Boat: fire, explosion, air raid, radiological contamination, or hurricane.

The plan for dealing with each of these is written down in a rather extensive volume which covers every contingency that might possibly occur. It describes warning systems and signals, contains organization charts, describes functions of the organizational units under the Directorate. It contains six "Bills" which describe in detail what is to be done—two Bills for air raid and one for each of the other four emergencies. The Bills cover the responsibilities and duties of everyone from the General Manager down to messengers and the fire boat crew.

The details of the organization are not important to us here today. What is important is that you know

(*Continued on page* 20)

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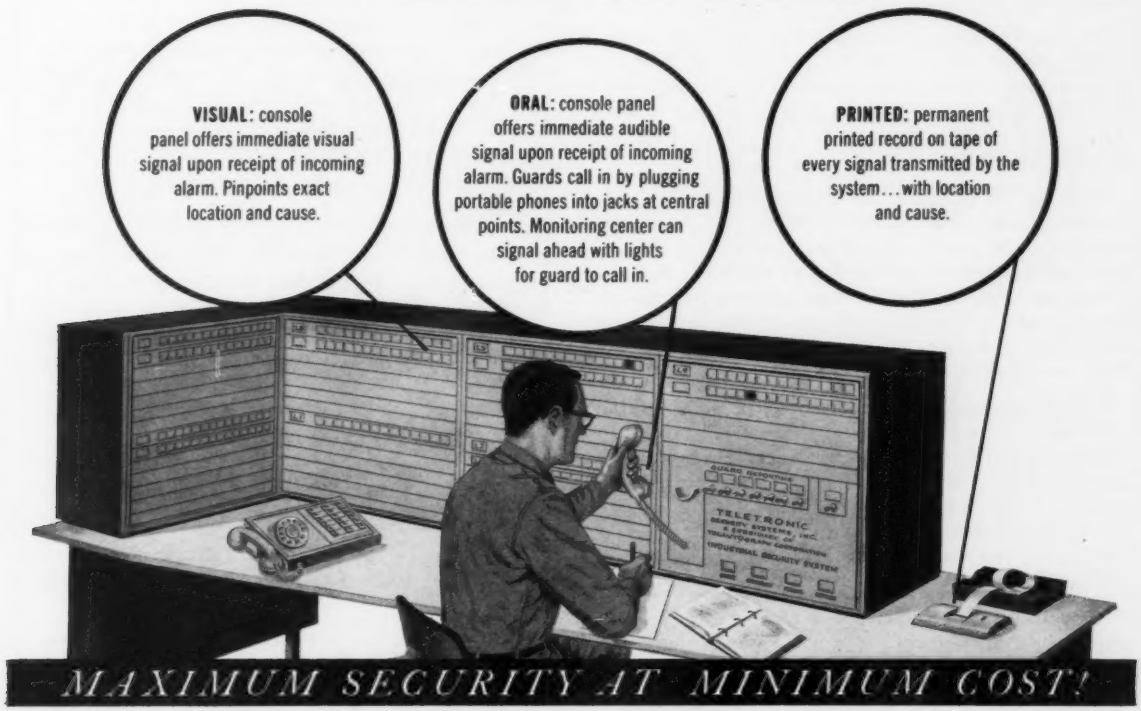

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Juvenile Shoplifters

By

Sargent J. Curtis
Security Superintendent
J. L. Hudson Company
1206 Woodward Ave.
Detroit, Michigan

J. Edgar Hoover, Director of the FBI, wrote in the FBI Law Enforcement Bulletin of 1956, "The basic failure of our society in the field of juvenile delinquency and crime is that of parents who give their children a place to live without teaching them how to live."

The annual report noted the arrest of more than half a million boys and girls between the ages of 10 and 17 for the year 1955. Offenses spread across the whole range of crimes.

Mr. Hoover proposes a remedy of "parental responsibility under law." Calling the home, "The first and foremost classroom in America," he suggests that we solve no problems by putting children in jail. The real problem he points out is the problem of delinquent parents.

"Among the complex and various causes spawning juvenile crime, there certainly is no more common cause than the apathy or failure of parents to properly discharge responsibilities to their children. This basic failure is appallingly prevalent; and the regrettable fact is that the irresponsible parents who neglect their duty continue to do so because they are not held accountable for their dereliction."

Today, in many stores, over 50% of all shoplifter apprehensions are teen-age children. The teen-age shoplifter during the past few years has become a major threat to the retail store. These young delinquents are a big problem for food chains, variety stores, drug stores, hardware stores and department stores. In branch stores they are usually even more of a problem than in the parent store.

The teen-ager represents one of the most troublesome, the most aggravating, and the most complicated phases of the shoplifting problem. This is true not only because the teen-ager represents such a large percentage of total shoplifting cases, but also because of the nature of their acts. Some juveinile activity is really vandalism. There is often damage to store merchandise. Some of the thefts are vicious, practically none of them represent economic need. Retailers suffer considerable loss as a result of teen-age activities.

What makes the problem most complex is that the entire future life of a young person may be seriously affected by the action, or failure to take action, of the retail store. To men and women in retail security work, many of them parents themselves, this is the most difficult part of the problem.

(*Continued on page* 34)

"The problem of youth in mutiny is acute and profound. Bearing as it does on the character of the future it demands immediate attention. But it takes courage even to view the situation in its true perspective and boldness to act as the condition demands immediate attention.

"If there was anything that used to distinguish the period of youth from other times in life it was the privacy, the aloneness of those fretful years. But what we observe today is otherwise. Youth has abandoned solitude; it has relinquished privacy. Instead, these are days of pack-running of predatory assembly, or organization into great collectivities that bury, if they do not destroy individuality.

"This has far reaching implications. One of them is the fact that it can yield no social gain. In addition, we hardly need be reminded that in the crowd, herd or gang, it is a mass-mind that operates—which is to say, a mind without subtlety, a mind without compassion, a mind, finally, uncivilized."

Robert Lindner, discussing
"The Mutiny of the Young"
in his book, MUST YOU CONFORM.

IS YOUR PLANT MARKED FOR SABOTAGE?

THINK BACK a little to the wave of violent industrial strikes in this country, the creeping Communist menace in some of our trade unionism. Trouble has come to others; will it come to you?

It surely will, because the Red conspiracy to enslave the free world includes you and your plant in its plans. The argument amongst the Communist "Big Two"—Khrushchev and Mao — is of means and not ends: the end remains the same, a complete take-over of the free world. This take-over will be much easier once Western industry is hamstrung and made inoperative.

How You Can Protect Yourself

It is important that you learn how the Communists operate. A sober new book, "The Naked Communist," explains how they infiltrate, organize, proceed to sabotage. There are more devious ways of taking over a plant than man normally dreams of!

In "The Naked Communist," author W. Cleon Skousen draws on his years of experience as FBI man, and chief of police, to expose the web of communist intrigue in this country.

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SECURITY PAYS IN MANY WAYS!

By *W. J. McDonald* — Head Security Section
Arma Division, American Bosch Arma Corporation
Garden City, New York

The Armed Forces Industrial Security Program has been pulled and strained for the past twenty years more than almost any other idea man has thought of since Thomas Paine coined the phrase, "The United States of America."

I have been associated with this program from the very beginning and I have seen some people injured, or inconvenienced, by it. However, I have noted that each person had "his day in court." This redress could not have occurred in any of the Iron Curtain countries.

This is not to say that many aspects of the program cannot be improved. Each problem that has come up has been handled to the satisfaction of all parties concerned. In the days ahead, there will be changes and modifications to the program, but you will note that the preservation of individual liberty, while still protecting our national interests, is the paramount guide to finding the answer.

In 1930, speaking at the Lenin School of Political Warfare, Dimitri Z. Manuilsky said:

"War to the hilt between Communism and Capitalism is inevitable. Today, of course, we are not strong enough to attack. Our time will come in 20 or 30 years. To win we shall need the element of surprise. The bourgeois will have to be put to sleep. So we shall begin by launching the most spectacular peace movement on record. There will be electrifying overtures and unheard-of concessions. The Capitalistic countries, stupid and decadent, will rejoice to cooperate in their own destruction. They will leap at another chance to be friends. As soon as their guard is down, we shall smash them with our clenched fists."

With just a little thought to the matter, I am sure you will see their plan is on schedule. Nothing has changed, or happened, that would require them to change their immediate or long-range plans.

The Industrial Security Program is OUR plan to hinder, delay, or stop our potential enemies from obtaining classified or intelligence information which they could use to their own best interest and against ours.

There is no one aspect of the program that is hard to follow or understand. However, when followed by everyone, these procedures have unlimited deterrent capabilities.

It has been said by some of our leading scientists that the security program hinders the free flow, or expression, of scientific thought and ideas.

This statement can only be made by those who do not understand either the program, or its procedures.

There is nothing which prohibits the exchange of information as long as certain administrative procedures are followed. Many of you have had an actual acquaintance with these procedures and I am sure you now know you were able to obtain all the information you required to accomplish your mission, with only a minimum effort on your part.

If, at your company, your over-all security attitude is not to say, "Stop! You can't do that," but rather to say, "You are not permitted to do it *that* way" . . . "May we suggest *this* way to you," you will always be able to accomplish your joint mission in a team spirit instead of one organization working against the other.

You will find that following approved security procedures, governing the release of information, will be one of the main factors in your receiving recognition of your accomplishments.

No matter how many contracts you have in the house, each requiring its own degree of protection, as long as you administer your joint responsibilities in a spirit of cooperation, you will continue to enhance the state of the art with a superior product, delivered on time, or ahead of schedule.

Those who ask what we are fighting for would soon find out, if we stopped.

Yes, Security Pays, in *Many* ways!

Mr. McDonald was one of the first full time security officers in the country, having started in 1945, when we were in our infancy as a profession.

Mr. McDonald was the security officer at New York University for the Advisory Group on Electron Tubes, and he served in a similar capacity with Fairchild Astronautics prior to joining Arma as Head of their Security Section.

He is a former licensed private Detective in the State of New York, having owned his own agency in that state.

He appears as the Security Officer in the Department of Defense security film, "The Hollow Coin".

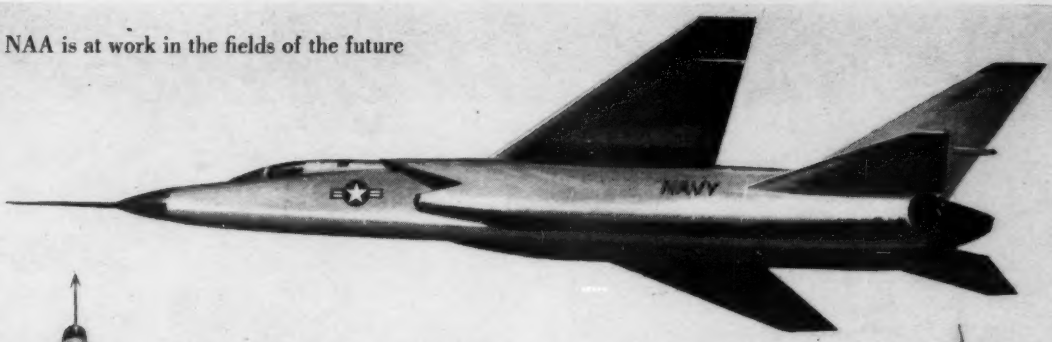
He is frequently called upon as a guest speaker, or instructor, on Industrial Security, by high school science classes, Civic and Religious Organizations and U. S. Government Agencies.

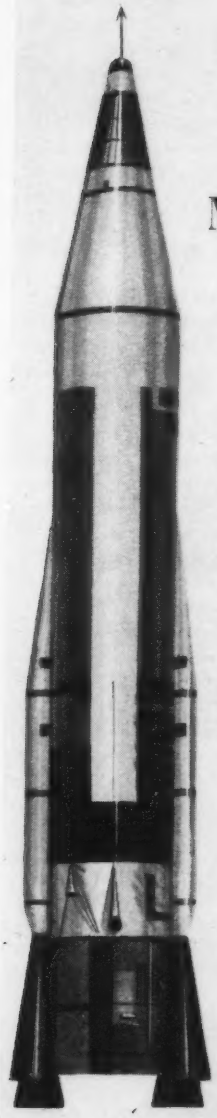
He also writes a weekly newspaper column for a chain of weekly papers, and has a 15 Minute radio program each week. He also narrates commercial and training films for industry.

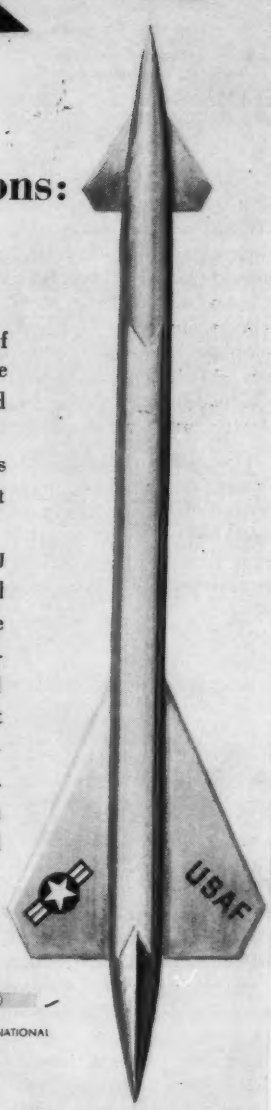
He served with the First U. S. Infantry Division during the last war, in the Military Police and Intelligence Branches.

Mr. McDonald is a member of the Long Island New York Chapter of the American Society for Industrial Security.

NAA is at work in the fields of the future







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You Are Management

By

Harvey Burstein
Security Consultant
Boston, Massachusetts

Frequently Security Officers (Directors, Managers, Administrators) meet to discuss areas of mutual concern. They often conclude that many of their problems remain unsolved because of management's attitude. On the other hand, senior management is equally concerned with problems of a security nature and express the hope that security officers soon will develop their management capabilities to the extent that they will be able to discharge fully all of the varied responsibilities that rightfully fall within the sphere of security activity.

The latter attitude reflects a degree of reluctance on the part of senior management to entrust security personnel with broad responsibility at this time. This often tends to upset or annoy security people. It hurts their pride. Some will attempt to refute this point by falling back upon their many years of experience. Some of the more recent entries into the field point with pride to their academic training for the job. Still others make reference to their own combination of both experience and academic training. Therefore, if we accept the premise of senior management on the one hand, and weigh this against the position taken by security officers on the other, wherein lies the difficulty?

A major underlying cause for these diverging opinions is the fact that *too few security officers realize that they ARE management,* and consequently they fail to think and act like management. This, in turn, militates against senior management assigning them broader responsibilities, affects the professionalization of industrial security work, and results in developing a status quo situation insofar as both senior management and security personnel are concerned. These statements may be offensive to some security officers. The fact remains, however, that security people do have their shortcomings and the failure or refusal to recognize them as such not only prevents their being corrected, but also aggravates an unhappy situation.

It is unwise and imprudent to deny the value of experience, academic training, or a combination of the two. It is equally unfortunate to assume that these factors alone, or in combination, produce a capable administrator or a qualified and competent manager. Just as an experienced security officer may easily detect a weakness in his organization's program, and an academically trained man may develop an excellent theory for improving a patrol, so must the "manager" be capable of doing these things and more. The security officer who personifies senior management's image is one who has a knowledge and understanding of general security and safety, plant layout, inventory controls, labor-management problems, customer and personnel relations, purchasing practices, traffic problems, civil defense, community relations, industrial espionage problems, investigations, law, budgeting, and general business administration. He is of above-average intelligence, educated, and capable of supervising as well as performing the basic security functions. He must have a manager's outlook, and he must have the ability to express himself so that he can communicate easily with his superiors, equals, and subordinates on any aspect of industrial security and plant protection.

We assume that a security officer is capable of handling his company's security, safety, traffic, and investigative responsibilities. Too often, however, his inability or his unwillingness to look beyond these basic functions prevents his being accepted as a full-fledged member of the management team. Plant layout is vital to good security, but it is an even more important factor in operating efficiency. The latter has a more direct bearing on profits and losses than does the former. The areas of good security and efficient operation are not incompatible. Consequently, a security officer who fails to recognize these facts, and whose recommendations either ignore these considerations or fail to reconcile them, is not thinking like management. A security director who becomes so concerned with matters of detection and apprehension that he ignores the value of prevention and overlooks the importance of sound personnel, customer, and community relations is not acting like management.

One of the most frequently mentioned and difficult areas of involvement in discussing a managerial approach is that of budgeting. Two factors appear to co-exist, namely, the security officer's apparent inability to plan a budget properly and his being denied an opportunity to prepare and present for consideration a security budget. These factors almost pose a riddle—which comes first? Here, again, it frequently is a matter of attitude. Senior management all too often is disturbed by the fact that many security officers are inclined to base the success of their respective programs not upon concrete results but rather upon the amount of money that they spend

(*Continued on page* 22)

92 "watchmen" protect "WATKINS" ONLY 3 OF THEM ARE ON THE PAYROLL

One of the outstanding advantages of an Autocall Property Protection System is the day-in-day-out savings . . . enough to pay off the initial cost in a short period of time. At the Watkins Products Inc., Winona, Minnesota for example, only one-third the normal security patrol personnel is required.

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that we do have a comprehensive plan worked out. So far, we have been very fortunate. We have not had to use any of the plans except one. We have never had a major fire, explosion, or radiological accident.

Incidentally, we feel quite proud of this last fact. We have a record of working with radioactive material that is longer than any other shipyard in the country. Since the early 1950's, when we began building the Nautilus, we have maintained a record of radiation safety which is completely free of major incident or even minor over-exposure. The credit for this record goes in large part to our Health Physics people, whose care and experience will be an invaluable asset to Electric Boat and the community should there ever be danger from contamination.

There is one Bill which we use almost every year. Electric Boat, as you know, is located on the Thames River, a short distance from Long Island Sound. Every fall, almost without fail, we receive hurricane warning from the U. S. Navy and the U. S. Weather Service. We have found that thanks to the Hurricane Bill, we are able to prepare for the impending storm a lot more quickly, effectively, and at less expense than we could in the days before we had everything well thought out in advance. Since we adopted the hurricane preparation plan, we have saved more than $10,000 every time we have had to get set for a hurricane.

In late July or early August of every year, preparations begin. Lists of people who will be called in if a storm should strike are brought up to date. Names are deleted and added, addresses and phone numbers are checked, the leaders of the eight control areas in the shipyard are given the current lists so they need waste no time in calling their people in.

Here's what happened when Donna visited Electric Boat in September of this year. When we first received word via Navy teletype that Donna might hit the yard, top management was alerted. When the storm was 48 hours away, the Works Manager set "Condition III."

The Emergency Directorate was called in, and top management was notified. The Electric Boat Weather Advisor began to keep a chart of the progress of the storm. The Works Manager checked the yard to see what must be done if Condition II was necessary. When it was estimated that the storm was 24 hours away, the Works Manager declared Condition II, and the preparations began. This was at midnight, Sunday, September 11. From the setting of Condition II until the danger was over, the Central Control Station, the nerve center of emergency operations, was manned by the Emergency Directorate. Weather reports were received and plotted, orders to personnel performing emergency duties were sent out, and reports of progress were received here. All the emergency crews were called in, and the tie-down, lash-up, and bracing operations began. All loose gear and material were gathered up, the ships on the ways were covered. In the Central Control Station, there was orderly confusion. The Emergency Directorate had reported, and soon after the Assistant General Manager came in. Coffee and food, blankets and cots were arranged for. The fire chief called in his full crew about 2:00 a.m. on Monday morning. From that time on, they patrolled the yard and three fire trucks stood by. They were not needed.

Preparations continued throughout the night. The George Washington, the first ballistic Missile submarine was in the floating dry dock undergoing overhaul. Emergency crews began to seal hull openings that had been made for repair work. The nuclear submarines Skate, Skipjack, Tullibee, and Seawolf were double-moored to the docks. Other craft were moved up the river away from the high tides. Pumps, boiler machines, and power units were removed from the dock area. On the marine railway, a 35 horsepower motor was hoisted up 11 feet—a few feet above the high water mark in the 1938 hurricane.

Condition I—hurricane imminent—was set at 3:13 Monday morning. By this time, most of the major, time-consuming tasks had been completed. There remained but a few minor details to take care of. Emergency vehicles—station wagons, trucks, and bulldozers—were gathered and kept on hand in case they were needed. Diesel generators were prepared for action. The yard hospital was manned for emergency treatment. Extra telephone operators were called in. All classified documents were placed in repositories, and every window and outside door in the plant was closed.

By 9:30 on Monday morning, the yard was braced and waiting. At noon, word came from the Navy to take the Washington out of drydock. Workmen began the undocking operations, fighting high winds and torrential rains. The tugs completed the job, and by 3:00 p.m. the ship was moored with extra lines to the wet dock. All employees except emergency crews had been sent home at noon on Monday, and the second shift had been cancelled by announcements on local radio stations. Fortunately, for us, capricious Donna turned up the Connecticut River valley, and only fringe winds and tides struck Electric Boat. At 5:15 p.m. the tide rose level to the dock—5 feet above normal high tide—and then subsided.

At 6:15 restoration began. On the following morning, everything was normal in the shipyard once again. The dock area showed no sign of the preceding day's bustling activity, except, perhaps, that some of the men looked a little tired. Some had been on duty for as much as 24 hours, working and grabbing naps on cots. I was 40 hours without sleep, which was, however, my own doing and really not necessary. I was just interested in watching the operation of the plan.

(*Continued on page* 22)

YOUR COMPANY'S

Security Officer

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FOR THE 7TH NATIONAL SEMINAR

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Defense and Disaster Preparedness (*Continued*)

Damage was slight—power off in some sections of the yard for about an hour, fire alarm system out for about an hour and a half, a little damage to the floating dry dock, and an accident to a crane.

The entire operation went off smoothly. There was hustle and bustle, but very little confusion. Preparation for emergencies had once again proven its value.

In handling the effects of Hurricane Donna, Electric Boat had very little contact with outside agencies. What contact we had was limited to weather reports and incoming messages on the Navy teletype. Mutual aid is an important reserve in our disaster preparedness plans, however. We have agreements with the U. S. Submarine Base in Groton, and Chas. Pfizer Company to use each others' CO_2 trucks if they are needed. We have more complete arrangements with the Town of Groton and the U. S. Coast Guard Training Station at Avery Point for interchange of a great many different kinds of disaster equipment and aid. The way to get aid is all fully documented in our disaster plan, complete with what is available, who to call, and telephone numbers. I am happy to say that so far we have not had to use these arrangements very much. We have lent a CO_2 truck to the Submarine Base and sent fire fighting equipment to Pfizers to help in battling a dock fire. We have not, as yet, needed any outside assistance. It is reassuring to know, however, that aid is available if we have a catastrophe that we cannot handle ourselves.

This about sums up what I have to say to you. I have spoken briefly on the role of the industrial security director in disaster preparedness and mentioned some of the things he can do. I have outlined our emergency organization at Electric Boat and described how it functioned in the case of Hurricane Donna. I have touched on the mutual aid agreements we have.

You Are Management (*Continued*)

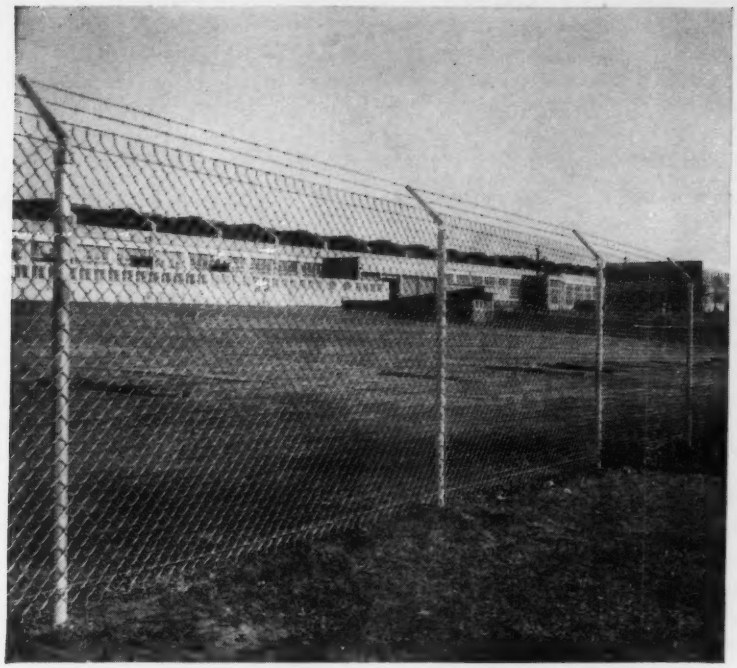
and the number of people that they supervise. This impression, even if inaccurate, explains why senior management is reluctant to entrust the preparation and presentation of the security budget to the security officer. As a resulit, this task generally is assigned to a company officer who has no real concept of security or of the security department's needs. More times than not this works a hardship upon both the security officer and his program. A security officer's ability to provide an adequate, well-balanced program is important, but so is his ability to recommend measures that are both effective and feasible from a financial standpoint. For example, in considering leased versus purchased alarms, or contract versus company employed guards, he must approach his superiors on the basis that one of these services not only will provide better protection, but also that it will be more advantageous from both an administrative and economic point of view.

Probably one of the single most important problems, aside from developing a management attitude, is the ability to communicate. This already has been referred to in passing. Communication—the ability to express yourself so that your ideas will be both understood and well received—is important in any activity, business or otherwise. This is no less true where industrial security is concerned. The ability to communicate with subordinates is essential to successful administration; the ability to do the same with equals can make doing a job easier and more satisfying. However, being able to communicate with superior's not only enhances the position of the security officer, but also enables him to deal more directly and effectively with senior management without the necessity for having to deal with an intermediary.

Whether or not senior management is prepared to accept fully the idea of industrial security programming or continues to think of it as a "necessary evil," the fact remains than an ever-increasing number of companies recognize that industrial security is here to stay. They will acknowledge that an efficient, well planned and properly integrated program can do more than protect company and personal property —it can be invaluable to the total operation in a manner that will be reflected favorably upon the annual statement.

Experience may enable you to establish a patrol route, academic training may provide a fundamental knowledge of budgeting and communications problems, and the American Society for Industrial Security as an organization can help to develop the prestige and importance of your work, but those problems which seemingly are inherent to your own particular position can best be solved by you yourself. Basically they are management problems, and "You ARE Management." Act, think, and present your case accordingly.

Mr. Burstein was born in St. Louis, Missouri, January 3, 1923. LL. B., The Creighton University, 1948. World War II veteran. Clerk, FBI, 1941-42; 1948. Special Agent, FBI, 1948-53. Chief, Foreign and Domestic Investigations, Surveys, and Physical Security, U. S. Department of State, 1953-54. Practicing attorney and Industrial Security Consultant, Boston, Mass., since 1954; also Security Officer, MIT, 1956 to date. Admitted Nebraska, Massachusetts, and Federal Bars. Member American, Massachusetts, Boston Bar Associations, ASIS, Society of Former FBI Agents, American Institute of Management, IACP, New England Association of Chiefs of Police. Lecturer on management and industrial security problems, Indiana University and MIT. Author of articles on industrial security, management, legal, and law enforcement matters.



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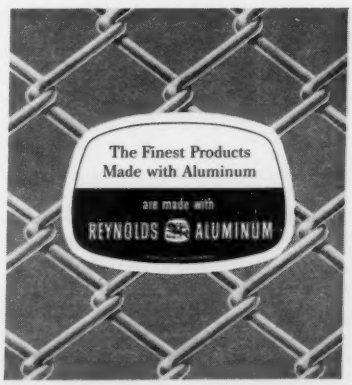

Watch Reynolds New TV Show "HARRIGAN AND SON" Fridays; also "ALL-STAR GOLF" Saturdays—ABC-TV.

some research has been going on at Long Beach State College regarding the use of the lie detector in applicant screening. Some of the series of questions that are being evaluated are printed below. The interpretation of subject reactions are the sole responsibility of the polygraph examiner:

SCREENING TEST NUMBER 1 (General Questions Test) (Educaton and Experience)

1. Is your full name .....?
2. Did you go to school at .....?
3. Did you complete the requirements for the ..... degree (diploma)?
4. Did you ever cheat on an examination in school? (Control Question)
5. Were you previously employed by the ..... company (corporation, etc.)?
6. Have you ever bee ı discharged from previous employment because of incompetence or misconduct?
7. Have you ever been a member of an organization dedicated to the overthrow of our government by force?
8. Have you answered all these questions truthfully? (Control Question)

SCREENING TEST NUMBER 2 (General Questions Test) (Character and Personality)

1. Were you born in (Place) on (Date) ?
2. Do you now live at .....?
3. Have you ever been arrested?
4. Have you ever been convicted of any criminal offense?
5. Have you ever been addicted to any drug?
6. Do you consume alcoholic beverages excessively?
7. Have you engaged in any homosexual activities during the past ..... years?
8. Have you ever taken anything unlawfully from a previous employer? (Control Question—the examiner should ask this question of a particular organization where the subject has been employed for the best effect)
9. Have you answered all of these questions truthfully? (Control Question)

SCREENING TEST NUMBER 3 (Peak of Tension Test) (Area Prejudice Test)

1. Do you have any feelings of prejudice or discrimination against Caucasians?
2. Do you have any feelings of prejudice or discrimination against Indians?
3. Do you have any feelings of prejudice or discrimination against Mexicans?
4. Do you have any feelings of prejudice or discrimination against Negros?
5. Do you have any feelings of prejudice or discrimination against Puerto Ricans?
6. Do you have any feelings of prejudice or discrimination against Orientals?
7. Do you have any feelings of prejudice or discrimination against Jews?
8. Do you have any feelings of prejudice or discrimination against Catholics?
9. Do you have any feelings of prejudice or discrimination against Protestants?

SCREENING TEST NUMBER 4 (Peak of Tension Test) (Degree Prejudice Test)

1. Do you generally have a feeling of uneasiness when around .....?
2. Would you have any reservations about inviting a prominent, well educated ..... into your home for dinner?
3. Would you be opposed to being with a ..... at an important public social event where you will be meeting friends?
4. Would you mind living next door to a .....?
5. Would you be opposed to working closely with a ..... for an extended period of time?
6. Would you resent sharing a room with a ..... for an extended period of time?
7. Would you be opposed to the marriage of your daughter or sister to .....?
8. Disregarding your present situation, would you have any reservations about marrying a ..... yourself?

(*Continued on page* 28)

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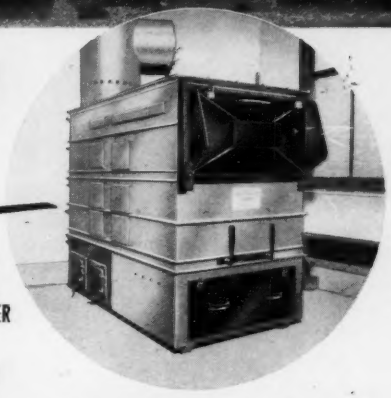

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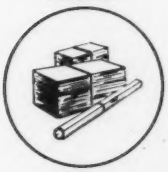

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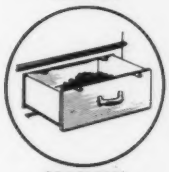

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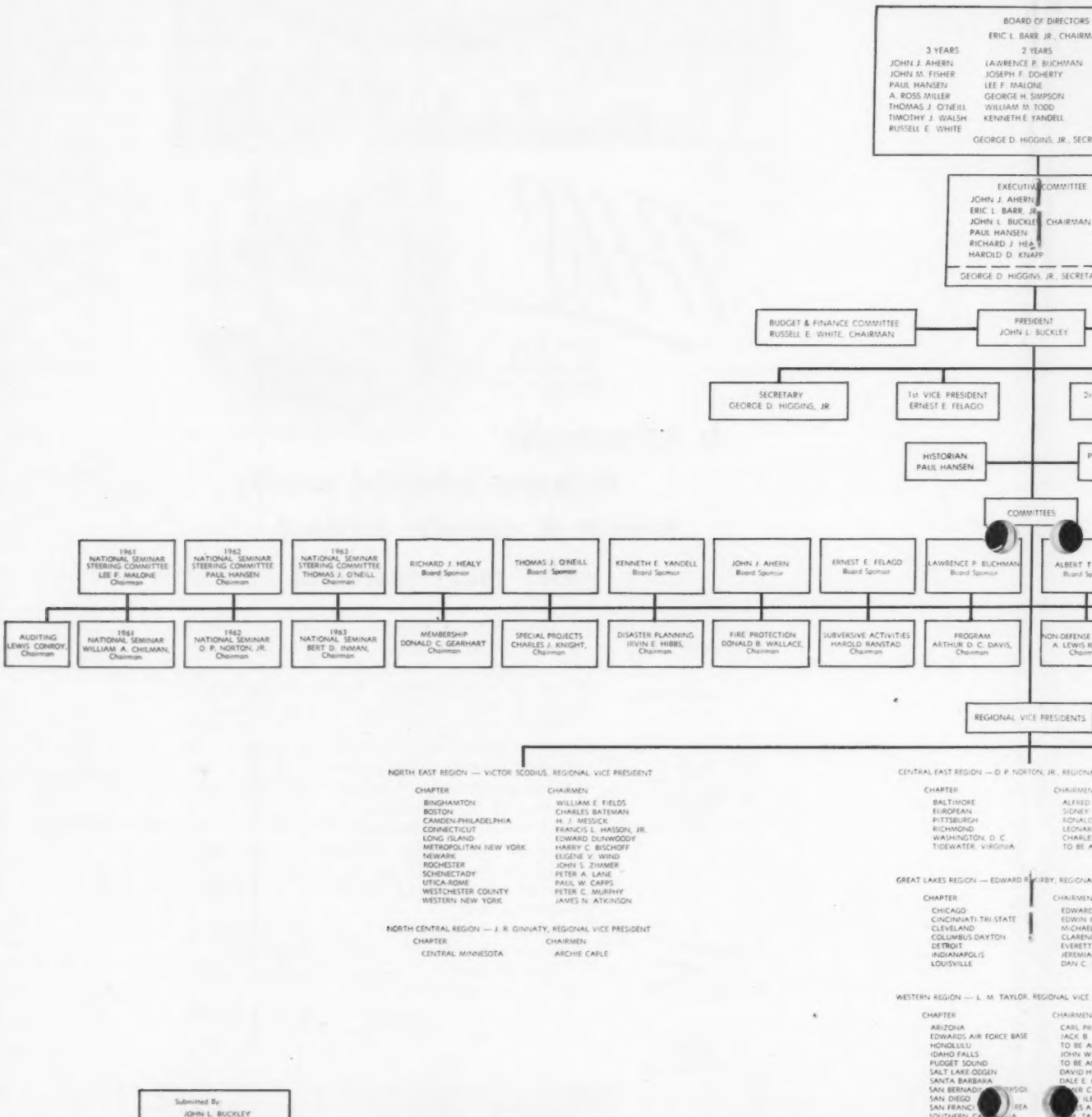

Submitted By:
JOHN L. BUCKLEY
PRESIDENT - ASIS

Y FOR INDUSTRIAL SECURITY
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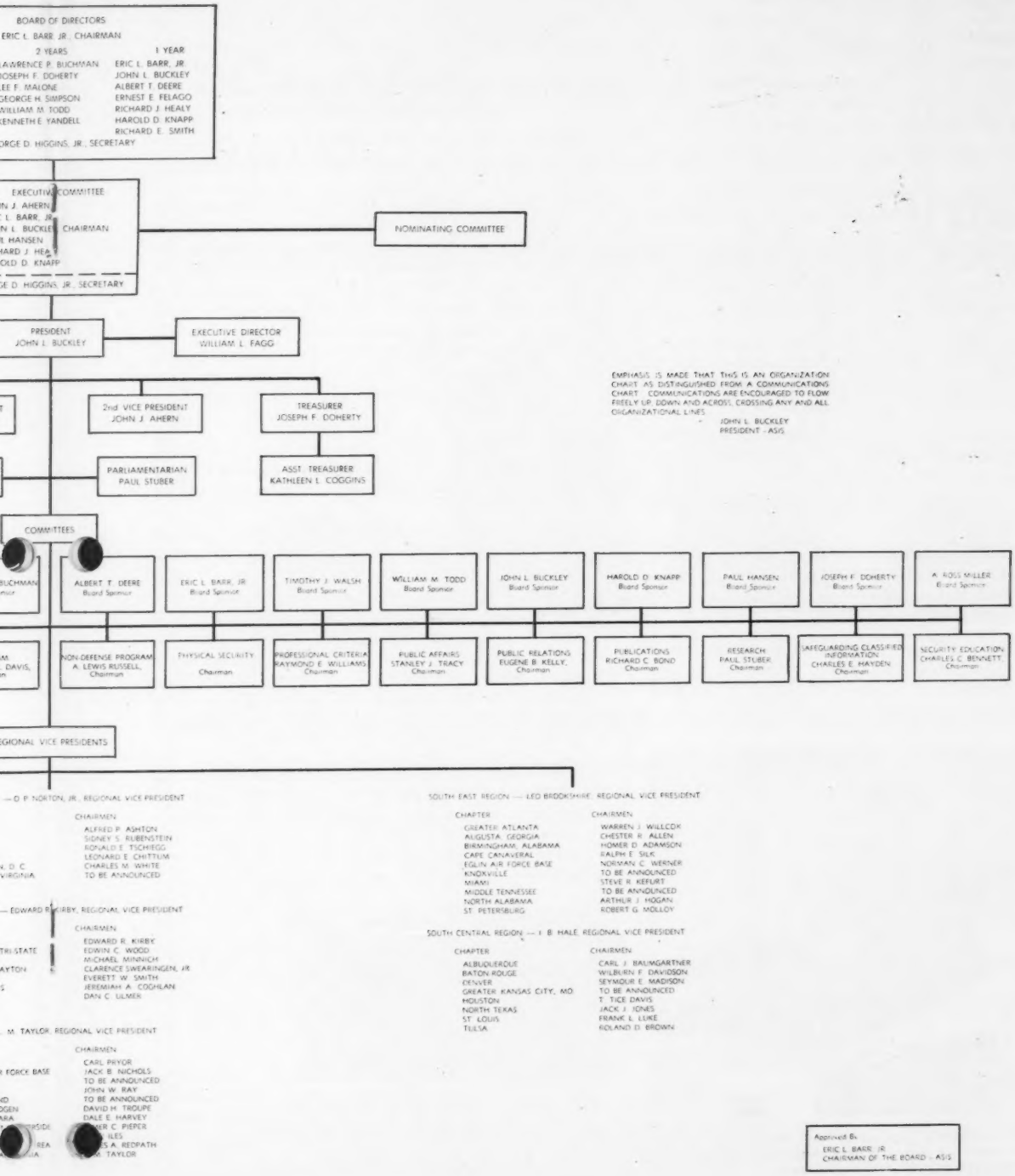

Applicant Evaluation (*Continued*)

As was pointed out before, these questions are being used in a research project at Long Beach State College and their validity and usefulness has not been completely established. Some of the results look rather promising, however. It is becoming more apparent that a lie detector could be of value in indicating areas of excess emotion during applicant evaluation. A series of questions, such as those above, could be quite revealing when administered by a competent examiner. Some of the possibilities and limitations of such a testing program are as follows:

Possibilities:

1. The test permits a quick, accurate verification of data supplied by the candidate on the application form.
2. It is possible to determine the presence of criminal activity in the applicant's background which has never been recorded by law enforcement agencies.
3. Character defects involving honesty, sexual deviation, truthfulness, excessive use of drugs or alcohol, excessive desire to gamble, loyalty, and other factors can be detected in most applicants.
4. Persons with a disqualifying background would be discouraged from applying for employment if the polygraph examination technique was made an integral part of the screening process, thus saving time, effort and expense.
5. It is possible to determine the degree of racial prejudice and other adverse belief systems and attitudes present in an individual if such traits are important in the evaluation.
6. In sensitive positions, periodic examinations have proven to be useful in assisting employees to give greater attention to matters of integrity, honesty and loyalty.

Left to right: Unidentified student at Long Beach State College, Miss Dorlene Marsh, a police science major and policewoman, and Mr. Price working with a deceptograph.

Limitations:

1. The deceptograph examiner must be highly qualified with considerable training and education in psychology, physiology, sociology, techniques of polygraph operation, chart interpretation, interviewing, interrogation, etc. Not many such qualified individuals are yet available, though several competent schools throughout the country regularly graduate qualified examiners. There are some totally unqualified persons now giving examinations who should be barred from such malpractice.
2. Some may object to such a technique on philosophical or moralistic grounds. Some may feel that this method is unfair because it reveals things about one's background that are personal and not for public notice. Since the polygraph records emotional change in such a way that the examinee has no control over the outcome, a candidate might object because of a feeling of invasion of personal and civil rights guaranteed by our Constitution. One reaction to this objection would be a suggestion: A suggestion for the applicant to seek employment in less sensitive organizations which do not require polygraph examinations as a part of the screening process.
3. The initial cost of the instrument, the examination room, and the expense of training a qualified examiner have also been mentioned as limitations. Acceptable instruments, such as those mentioned above, sell for variable amounts between one and two thousand dollars in our present economy. Would-be examiners can obtain training in most instances for approximately five hundred to one thousand dollars in a course lasting from two to four months. Agencies usually find, however, that the initial cost is saved many times over in a relatively short period of operation. (Several firms have reported saving thousands of dollars in one year's time where the lie detector examination was made a regular requirement of employment.)
4. Some individuals cannot be examined by the instrumental detection of deception technique because of physiological or psychological conditions. This is relatively a small per cent of the population, however. Increased examiner competence will reduce the possiblity of error in this respect.
5. Some applicants might object to the examination on the grounds that embarrassing facts about their past, even though irrelevant to the employing organization, might leak out and get into the wrong hands. Careful administration of such examinations and the resulting records would reduce this possibility.

It should be obvious by now that we are dealing with an evaluation technique which is capable of determining far more about a person who applies for employment than could be determined in any

(*Continued on page* 30)

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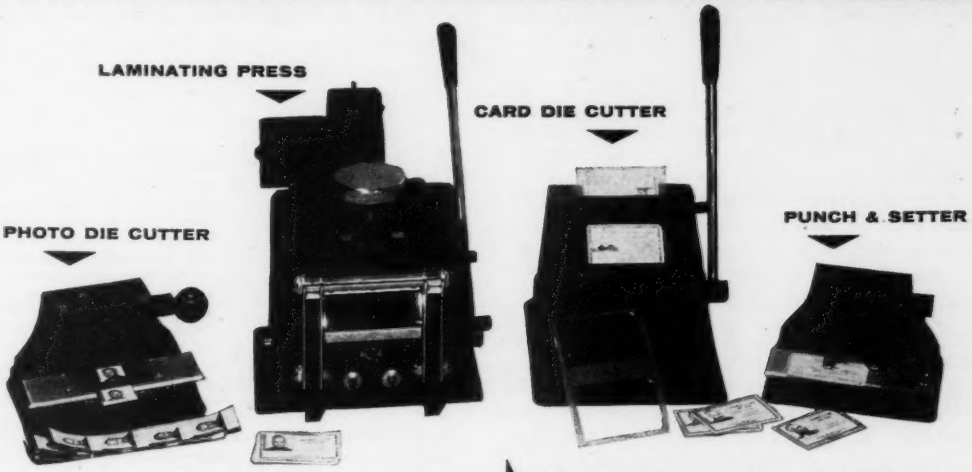

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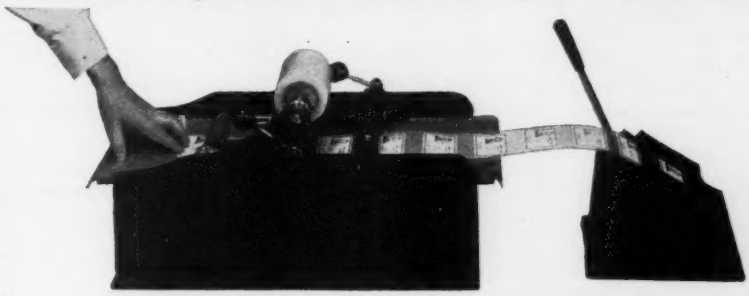

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Applicant Evaluation (*Continued*)

other way. Considerable skill is required on the part of the examiner in conducting the pre-test interview, formulating the questions, conducting the examination, interpreting the charts, determining the significance of emotional responses and conducting the post-test interrogation. This factor has led many experts in this field to express their opinions that of the total effectiveness of the examination, 90% rests on the competence of the examiner.

The examination itself basically consists of three main phases. The first phase is the pre-test interview, where the examinee is conditioned, psychologically, for the test. The mechanics of the test are explained and the individual is carefully evaluated, both mentally and physically to determine his fitness. The questions to be asked are discussed with the subject during the pre-test interview, to determine incidental relationships which might be emotion producing, and to ascertain other relevant factors which the examinee desires to explain.

The second phase of the examination consists of the actual mechanical administration of the polygraph examination. Usually a preliminary control technique, such as a card control test, is administered to determine the individual's reaction pattern. (No two individuals react in the same way.) A series of general questions, such as those outlined above, are then asked in separate tests. A control question is an integral part of each series of questions or tests.

Should the response to any question match or exceed the response to the control question, it becomes a starting point for the post-test interrogation. This third phase of the examination is designed to elucidate reasons for reactions to relevant questions. Responses that are not satisfactorily explained may result in an intense background investigation in a specific area before employment is offered.

It should be emphasized at this point that the polygraph examination is entirely voluntary on the part of the examinee. Without his full cooperation it would be impossible to conduct the examination and obtain reliable results. The examination should be administered in quiet, comfortable surroundings with minimum distraction for the best results. Only the examiner and examinee should be present in the room during the examination. One possible exception to this rule would be when the applicant is female and the examiner a male. Another woman should observe this examination, but not participate, to minimize the possibility of charges of compromise being brought against the examiner.

An attempt was made here to describe a good, reliable, humane, technique of evaluating applicants. This method should also bring a greater degree of objectivity to this process. It should be remembered, however, that this is only another personnel tool which seems to have some promise of assisting the personnel administrator with his important role of selecting the best candidate for the job. The lie detector examination will not solve all of his problems for him, but it may give him a more valid and reliable insight into some of those traits and characteristics which we deem so important in applicant evaluation. More research is needed in regard to this detection of deception technique, and some type of organization is needed whereby such research findings can be pooled, analyzed, correlated, and integrated. More and better training schools are needed which instill not only the basic concepts of deceptograph testing, but also emphasize the many subjective and qualitative aspects of instrument evaluation.

Personnel administrators who have specific questions regarding this suggested technique are welcome to address inquiries to the following:

Carroll S. Price
Assistant Professor
Police Science and Administration
Long Beach State College
Long Beach 4, California

Carroll S. Price did his undergraduate work at Central College in Fayette, Missouri and at the University of Missouri at Columbia. He received a Bachelor of Science in Education degree from the University of Missouri with a major in natural science in 1950. For the next two years, he was employed as a science teacher at Boonville High School, Boonville, Missouri.

In 1952, Mr. Price left teaching and became a Trooper in the Missouri State Highway Patrol. At different times, his assignment included patrolman, fireman's identification technician and polygraph examiner. He attended the Army Lie Detector Operator Course in 1955 at Fort Gordon, Georgia. In 1956, he was employed by the University of Missouri as an instructor in police science, and received the Master of Education degree from that institution in 1958. That same year, he accepted an offer from Long Beach State College where he has been since that time, and is now working toward the Doctor of Public Administration degree at the University of Southern California.

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(From a poster by the Martin Company)

will ultimately result in savings to industry and increasing professional prestige? Or are our programs merely serving to perpetrate archaic attitudes and practices? Merely making anachronisms respectable by some sort of academic baptism?

Let us take a few moments to survey the current scene. It is my personal opinion that the ideal industrial security academic training should combine the practical and the theoretical approach to the vocation. Thus, the student *should* learn *how to* operate equipment, *how to* prepare satisfactory reports, *how to* recognize and inspect fire, safety, criminal and vice hazards, *how to* investigate crimes, fires, accidents, and other like "how to's." But also, the student must learn the philosophy of commerce and industry, advanced techniques of supervision and administration, and the applications of planning and research. Thus the graduate is able to assume, *immediately*, the mechanical and procedural demands of an organization, while at the same time retaining and expanding those abilities and knowledges useful to his *future* assumption of supervisory and administrative roles.

Some would suggest that such a program is overly ambitious, would encompass too great an area, and serve to frustrate the student. Fortunately, I think, others would agree that such a program is the sole path to a meaningful and useful baccalaureate degree.

What, one may ask, would be the course offerings of such a four-year program? I submit the following general pattern:

Lower Division

Introduction to Industrial Security	3 units
Law and Evidence for Industrial Security	3 units
Industrial Security Investigations	3 units
Patrol, Traffic, and Vice Procedures	3 units

Upper Division

Industrial Security Supervision	3 units
Industrial Security Administration I (Line)	3 units
Industrial Security Administration II (Staff)	3 units
Industrial Security Administration III (Auxiliary)	3 units
Special Problems in Industrial Security	3 units
Fire Services Administration	3 units
Safety Services Administration	3 units
Government Contract Security Administration	3 units

In addition to such core, a well-balanced group of courses from business, sociology, psychology, English and speech, and a basic college or general education requirement would be incorporated.

I think we should outline the most troublesome problems facing us today in relation to industrial security training:

(*Continued on next page*)

Scientific Training (*Continued*)

First, curriculum problems. We have no criterion for placing courses into a college catalogue, and any proliferation of course offerings would be unwise. Any careless development of curricula could result in manifestations prejudicial to professional development. We would suggest that this society could perform a great service to industrial security by careful curriculum studies, and by the preparation of basic curriculum standards to be presented to the institution of higher learning.

Second, staff problems. If academic responsibility is to be achieved, the utilization of instructional staff must be rigidly controlled. Not only industrial security experience, but possession of advanced academic degrees should be required. It should also be obvious that each staff member should be expected to do basic research, and to publish, as well as instruct and counsel. The society could perform a great service by making instructional needs and availability known to all members and to academic institutions.

Third, student quality control problems. The mixed class—made up of "oldtimers" and relatively new personnel—is encountered where the working practitioner as well as the full-time student is enrolled. Some programs gear the work to the lowest common denominator—so as to retain students; whereas other programs are geared to high quality levels—even though many drop out. Quality control *must* be established by testing, and by rigid course requirements. To coddle the industrial security student for the sake of camaraderie or fat enrollments is neither fair to the student, nor to the development of a professional service. Perhaps this society could work toward the development of a general written examination to be given prior to graduation, which would insure a grasp of basic materials—somewhat like the "little bar" examinations given in the law schools.

Fourth, and most important, practitioner relationship problems. Some industrial security administrators fear the candid and objective eye of the academician and the changes they know would be forced by close association with the colleges; and some academicians fear the possibilities of dictation by the practitioner. That is probably at the root of the aloofness between academician and practitioner — an aloofness that is not particularly conducive to healthy relationships, nor to professionalization.

Internship programs are feasible, eminently practical, and would aid both the industrial security unit and the student. The society should encourage the membership in and participation of more of our academicians in order to foster better relations.

If formal academic programs can provide professional pre-service training, what about the employed member of the vocation? It seems to us that his education and development as a professional can be enhanced in the following fashions:

1) He can attend the formal programs during evehours—

2) He can be taught by academicians brought to his working place—

3) He can be provided with the latest in films and tapes—

4) He can be provided with up-to-date training manuals or bulletins—

5) He can be provided with a complete industrial security library and participate in a planned reading program—

6) He can be sent to short-course or institute type training programs sponsored by company or society—

We honestly believe that professionalization of the industrial security service is a possibility—and we believe this because we know many industrial security professionals—men of the highest competence and integrity—who are setting the pace for American industrial security. We in this society can serve them and the service by installing a truly professional "scientific training for industrial security."

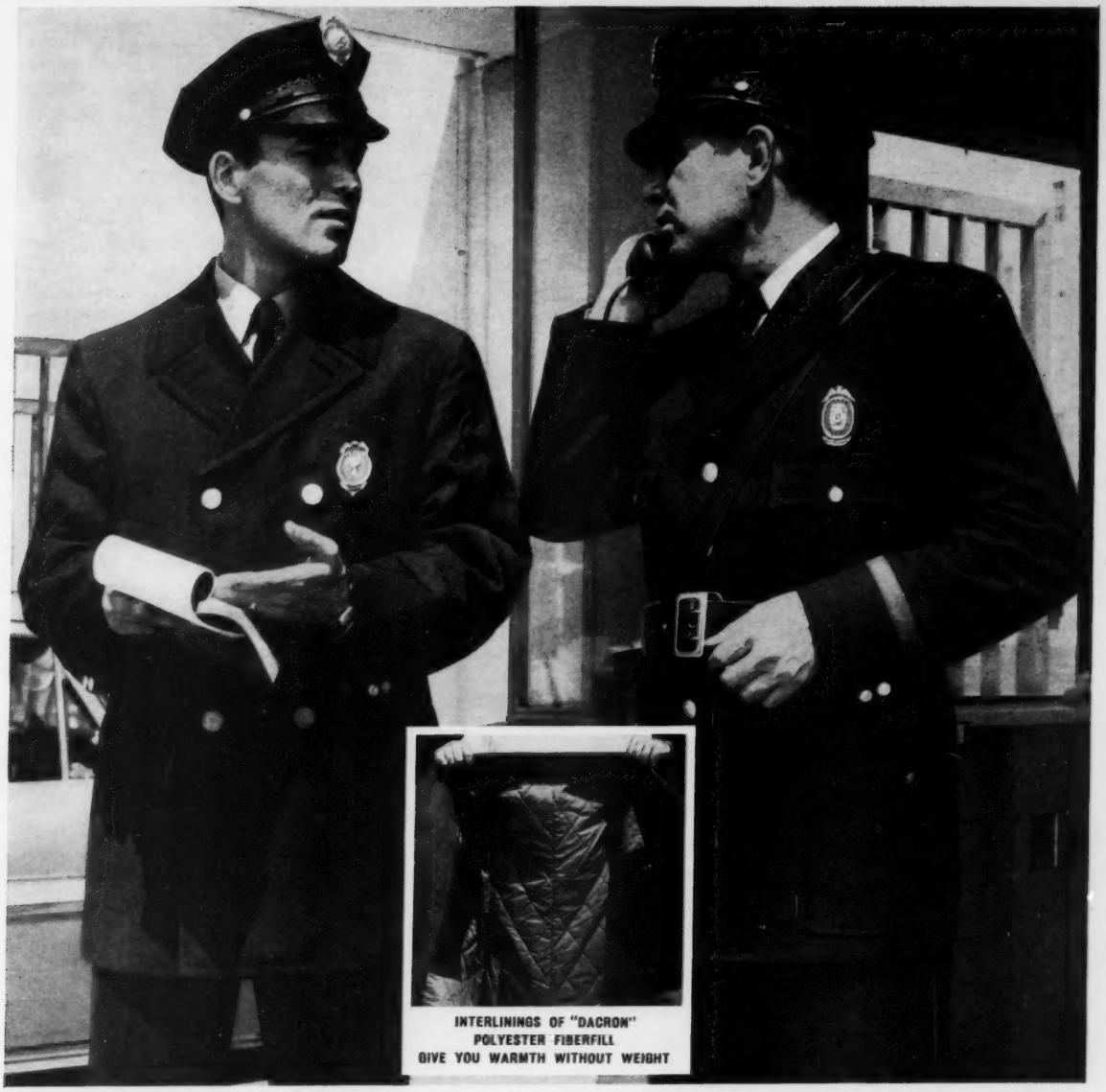
If you are asked about formal education for the preparation of the professional industrial security ad ministrator, what shall your answer be: "Pipe-dream" —or *"Sine Qua Non"*? To me, the question of professionalization rests upon your answer.

Dr. Germann received the Bachelor's degree in Philosophy from Loyola University, Los Angeles, and the Master's and Doctoral degrees in Public Administration (with a specialization in Law Enforcement) from the University of Southern California.

He was a sworn officer of the Los Angeles Police Department, serving assignments in traffic, juvenile, vice, patrol, and administrative units, then joined the faculty of the School of Police Administration of Michigan State University; in 1957 he assumed the responsibility for the Police Science program of Long Beach State College. Dr. Germann has acted as special police consultant to several Michigan and California communities, as well as serving on many police oral examining boards.

Dr. Germann served with the U. S. Air Force in World War II and during the Korean engagement. He is a member of the International Association of Chiefs of Police (Education and Training Committee, '58, '59, '60), the International Federation of Senior Police Officers, the California Peace Officers' Association, the American Society of Criminology (Central Vice-President, '56, National Membership Chairman, '57, '58, '59), the American Society for Public Administration (Board of Directors, Los Angeles Chapter, '59, '60), the Southern California Personnel Association, the Western Governmental Research Association, and the Society for Clinical and Experimental Hypnosis. His writings have appeared in POLICE, THE POLICE CHIEF, THE JOURNAL OF CRIMINAL LAW, CRIMINOLOGY, AND POLICE SCIENCE, and other professional publications. He is author of POLICE PERSONNEL MANAGEMENT (Charles C. Thomas, 1958).

Dr. Germann is married (Margaret Ann O'Rourke, Oklahoma City), father of two, James, 10, Therese, 8, and resides in the Los Altos section of Long Beach.



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Juvenile Shoplifters (*Continued*)

In many parts of the country, teen-age shoplifting has become a "sport." In some cases there are juvenile clubs that require certain shoplifted items as part of the club's initiation. In one case, a cashmere sweater club was formed in a high school and over 30 high school girls stole cashmere sweaters from local stores in order to become members of the club.

It has been proven that some professional adult shoplifters have been using teen-age children as a tool for their activities. The teen-ager also is susceptible to theft because of the new open type displays common to modern retail practices.

What is seldom considered is the fact that aside from the current losses, caused by these teen-agers, retailers across the country are facing a future of adult generations with a liberal education in the art of retail thefts. These things, plus the responsibility that all of our retail management people have toward the youth of our nation makes juvenile shoplifting an ominous situation.

Glen Dornfeld, Security Manager of Dayton's in Minneapolis, Minnesota, picked up a teen-age girl recently who was part of a Minneapolis teen gang. The gang had "rules and regulations" which are interesting because they illustrate how thoroughly some of these young thieves prepare themselves for the battle of outwitting the retail detective.

Rules and Regulations

1. Select counter or rack.
2. Don't be jumpy or obvious like whispering.
3. When you have found the article you want, set it on the counter near you, then look around and say, "I wonder where the clock is." While looking for the clock, keep looking for someone who may be watching you.
4. If you are satisfied no one is watching you, slip the article into you hand and then slip the article into your pocket.
   If by accident you are seen, say, "Oh no, I lost my gloves." Then your partner should suggest looking for your gloves. Get away as quickly as you can.
5. If you get your article without being seen, say, "Oh Bev, my little sister will be (number of articles) next week."
6. After you say this to your partner you should say, "My brother is (number of items) years old." If each has the same number of articles indicated by above method then leave. If one person has less, the first one should wait until her partner has just as many by indicating so by the above code.
7. Don't linger at counters too long.
8. Keep talking but not too loud.
9. If your pal is in the process of stealing an item, and you see that she is being watched, say, "I have to get my watch fixed!" . . . Scram! We will have other plans for sweaters and skirts. The secret messages will be used for all kinds of cases.

This example of planning by juvenile thieves is not unusual. It is typical of the ingenuity and intelligence of our younger generation. In a way it could be said that it is amusing, except for the real tragedy which underlies such actions. The results of arrest, the disgrace and humiliation are far too serious and too much a tragic force in the teen-ager's life to allow these childish instructions to be considered anything but serious.

One thought on juvenile shoplifting has been advanced by E. B. Weiss of the Pittsburgh *Post Gazette*. Mr. Weiss explains, "For a broad over-all alleviation of the teen-age shoplifting problem, chains and department stores might very well get together and plan the formation of a Juvenile Anti-Shoplifting Corps. Youngsters are joiners. Buttons supplied to youngsters might be a part of this phase of the program.

"Support of Boy Scouts and Girl Scouts can unquestionably be obtained. So could the support of educators be counted upon. Teen-age shoplifting is of great concern to educators as well as to retailers. This 'corps' idea is closely similar to the special 'police' duties that selected youngsters in many schools throughout the nation are encouraged to perform. Their duties include reporting students who deface school property or violate other rules. Certainly if they catch a fellow-student purloining school property, they're expected to report the fact.

"It would seem, in any event, that if this suggestion would be considered, it would be wise for retailers to consult the proper authorities, educators, leaders of parent-teacher groups, sociologists, psychologists and, of course, the police."

In addition to the excellent approach suggested by Mr. Weiss for starting organizations such as the Juvenile Anti-Shoplifting Corps, here are some additional worthwhile ideas for curbing teen-age thefts:

Floor detectives and retail people in general should try to learn the special techniques of the teen-age thieves. These methods are often quite different from the adult shoplifter. For example, a good deal of juvenile thefts are done by youngsters traveling in groups or in pairs. This is not usually true in the case of adults, where the amateur shoplifter is likely to be a "lone wolf."

When a juvenile in one part of your store is creating a disturbance, take note of other youngsters elsewhere in the store. This is a common trick of diversion, in order to attract attention away from the juveniles who are stealing.

By consulting local store managers and police in your town, you can be filled in with a list of special methods used by the juvenile shoplifters of your area. Each particular locality gets its own codes, its own unusual types of theft.

Next, try and get the name and address of every youngster who is caught. If there is no doubt about

the youngster's guilt, then send an appropriate letter to the child's parents requesting their cooperation in solving the juvenile delinquency problem. Before sending your letter be sure it is given a legal check by your store counsel.

Very few parents know that their children steal. Almost no parents condone this type of behavior. The right kind of a letter can bring a grateful "thank you" from parents. It can also result in appropriate action in the form of parental interest and control of the situation.

Next, if the e same children are caught a second or third time, then the cooperation of the educational authorities should be sought. The teacher or school principal may prove helpful. Sometimes they are even more effective than parents.

Consult the police, only in those instances which appear to offer no other way out. If you do consult the police, give no publicity to this action. The public may condone, even applaud, action you take against professional thieves. But police action against juveniles for petty thefts will create a bad image of your store in the community. This is true no matter how justified your actions may be.

Don't try "frightening" tactics. Many of the juvenile social factors involved in teen-age stealing demand they show resistance to any implications of fear. Attempting to frighten children only acts as a stimulant to more hostile and more aggressive action. By trying to act tough you only create a "tough" attitude in the juvenile, you set his delinquency.

There are some youngsters who are psychotic or are so maladjusted they are beyond help. These social problem types should be kept out of your store entirely. Your store supervisory people probably know several children who answer this description.

Require the local police to cooperate in breaking up organized bands of juvenile shoplifters. Have them work particularly on those sponsored by professional thieves. Stores located near a high school are likely to suffer from both organized stealing and organized vandalism. These two things frequently go hand in hand. This type of problem is a matter for your local police—not for the retailer alone. A cooperative effort is needed.

Bring the problem of juvenile shoplifting out in the open. Have the subject discussed at PTA meetings, meetings of church groups, meetings of service clubs, Boy Scouts and Girl Scouts. Try to get the help of all the service group leaders in your community. These people can really be an aid if you can interest them. Their action will be an important contribution to reducing the juvenile shoplifting problem.

(*Continued on next page*)

Juvenile Shoplifters (*Continued*)

Community leadership example is important to the teen-ager. He patterns himself after others. Don't forget that many teen-agers need good leadership to imitate. The delinquent is often the result of parents who unintentionally set poor examples for their children.

In those hours during the store day when juveniles over-run the store, it's advisable to have extra security people. Sometimes a uniformed policeman who patrols the escalators, stairways and elevators can be helpful. The most critical periods are those hours shortly after school closes and sometimes the lunch period. Extra help during these times may very well pay for itself in reduced damage and loss of merchandise. You will also prevent ill will from your adult customers who may be disturbed by the juvenile gangs.

Work closely with your local press and radio stations. Try to publicize the evils of juvenile theft. Try to create a community attitude which makes juvenile stealing unfashionable and unacceptable. Let the juvenile feel that if he steals, he will lose status in the community.

Don't forget that teen-age girls are just as much involved in this problem as are teen-age boys. There is also some stealing by youngsters when they are shopping with one or both parents. This type of theft is often difficult to detect. Once having seen a youngster steal while with a parent, it is difficult to do anything about it. Under these circumstances, the parent becomes very protective, even though misguided, and is sometimes difficult to deal with. As long as the parents are not involved, and they seldom are, this may be one form of stealing that can be prevented only by education and publicity.

Most retailers have planned more action against adult shoplifters than against youngsters; however, the problem of juvenile delinquency is equally serious. Retailers must start to give these teen-age problem-children more attention.

Perhaps the most discouraging factor of this entire situation is that stealing starts out as sheer bravado or simply as an effort to act "grown-up." The juvenile tries to outsmart an adult, in this case the store personnel. But these small thefts lead to larger ones and the end result may be very tragic. In addition, of course, the cost of these thefts to retailing is soaring and it will go higher if immediate action isn't taken by every retailer in the country.

Conclusion:

The juvenile offender is still a child. He or she requires patience, understanding and help. As adults, what responsibilities do we have if not to help the young? Nearly every mature man and woman will remember someone who helped guide him or her during a childhood crisis. Now it is our turn to give a strong, supporting hand to the child in need of guidance.

No honest adult can look into the eyes of a juvenile offender without thinking, "There, but for the grace of God, go I."

Whenever you deal with a young shoplifter, remember that here is an opportunity for you to mold constructively a future life. Start with love and understanding . . . only good will follow.

S. J. Curtis

S. J. Curtis, known to his friends in the retail field as "Bob" Curtis, has since 1954 been Security Superintendent for the J. L. Hudson Co., Detroit, Michigan. This is one of the country's largest retail stores.

Mr. Curtis started in security work for the R. H. Macy Co., in 1939. In 1940 he went to Lord & Taylor, Fifth Ave., New York City, where he worked in the Security Department until 1946. At this time he joined the Jean Gros Co., in Pittsburgh and worked in publicity and public relations with this company from 1946 through 1949. In 1949 he returned to Lord & Taylor as Protection Manager.

He is advisor to Michigan State University, School of Police Administration where he also lectures. He conducts a course in Modern Retail Security at Wayne State University and gives lectures at Retail Security Seminars in New York University, Purdue University and National Retail Merchants Assn., Annual Conferences.

He is author of a new book called, MODERN RETAIL SECURITY. This is the first book ever published in the area in the field of retail security work and is published by the Charles C. Thomas Publishing Co., 327 E. Lawrence Ave., Springfield, Illinois.

". . . The condition upon
which God has given liberty to man
is eternal vigilance."

John Philpot Curran
(*Speech upon the Right of Election*, 1790)

Mr. Curran's words were intended to alert a struggling people to the vital need of continually guarding their national security. Today, almost two hundred years later, we are again reminded of these words of caution with an often-used paraphrase: "Eternal vigilance is the price of freedom."

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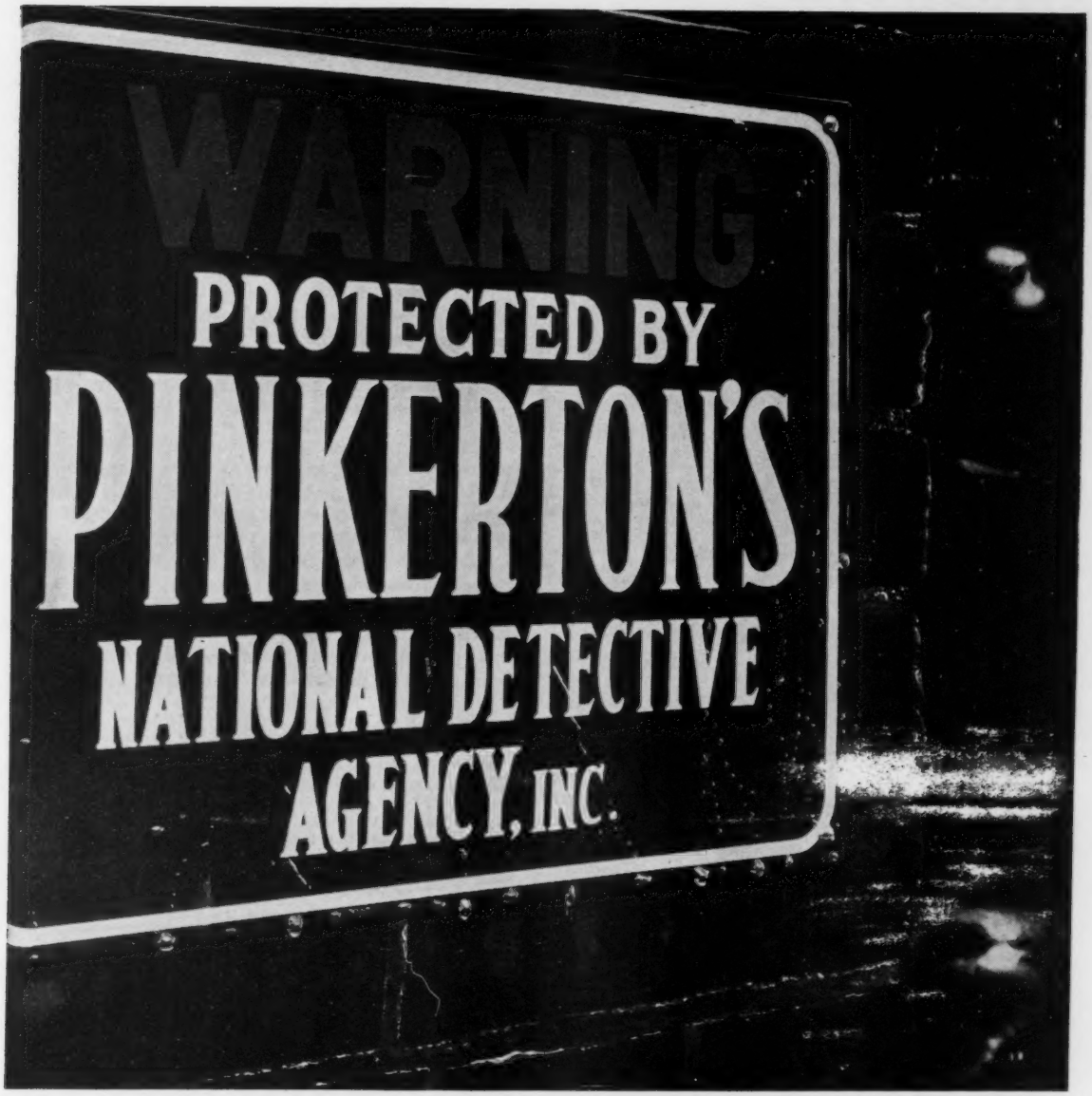

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New Procedure (*Continued*)

President Eisenhower recently issued an Executive order[5] setting forth the procedures to be followed in any hearing on an employee's security status. The purpose of this note is to examine the procedures set forth in the Executive order to see whether they deviate from the procedures of the past program and to analyze court decisions to determine whether the procedures outlined in the order could meet a test of constitutionality.

II. Programs for Industrial Security

A. History and Procedure

Although this country has had various measures designed to protect government secrets from unauthorized persons,[6] the formal industrial security program is a relatively recent development. In 1948 the Army-Navy-Air Force Personnel Security Board was organized with the functions of granting or denying security clearance to employees working with classified data and suspending clearance of those industrial employees whose continued access to classified material was considered inimical to the best interests of the United States.[7]

Since 1948, when the program was first formalized,[8] the investigative and hearing procedures have remained substantially the same. Subsequent changes have been primarily concerned with establishing one efficient program from the three separate service systems and establishing effective administrative operations.

The Armed Forces Industrial Security Regulation (AFISR),[9] issued in 1953, provided the program with a single uniform regulation for the protection of classified material in the hands of private industry.

On February 2, 1955, the Secretary of Defense issued Department of Defense Directive 5520.6, Industrial Personnel Security Review Regulation[10] which provided for a central administration of the industrial security program in the Office of Personnel Security Review under the Office of the Secretary of Defense. Before any employee was granted access to classified material, his background was investigated in some manner.[11] It was in the course of such investigations that derogatory information might have been received from neighbors, acquaintances and undercover agents, which then became part of the employee's confidential file.[12] If, after the investigation was completed, the employee's clearance was denied, he could request a hearing before one of the personnel security boards.[13]

The form of the hearing did not follow strict courtroom procedures, or strict rules of evidence, but adhered to the style of administrative hearings, and any material of probative value was considered.[14] The regulations set forth the purpose of the hearing as allowing the employee an opportunity to be heard and permitting the board to inquire fully into matters relating to the case.[15] In addition, it was specifically stated that at no time would the employee be informed of the identity of confidential informants, or be given an opportunity to confront or cross-examine them.[16] The burden of proof in the hearing appeared to be on the employee to show that he was entitled to clearance. The employee could present any witnesses or other material that he wished.

Further, the Board might examine the military department's file prior to the hearings,[17] and the Hearing Board might request the presence of witnesses, but did not have any subpoena power.[18] In addition, although the employee received a transcript of the hearing, this did not include the confidential file containing the investigative reports or any information which might reveal the identity of confidential informants or the sources of confidential information.[19] The practical effect of these procedures can best be seen by showing their actual application in *Greene v. McElroy*.[20]

B. Recent Cases

Because proceedings under the industrial security programs were not made public, and because the re-

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[5] Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960). The order was issued in response to the Supreme Court's decision in Greene v. McElroy, 360 U.S. 474 (1959) which struck down the Industrial Security Program as not having been specifically authorized by Congress or the President.

[6] 40 Stat. 533 (1918), (now found in 18 U.S.C. §§ 2151-2156 1958); Air Corps Act of 1926, ch. 721, § 10(j), 44 Stat. 780.

[7] Memorandum of Agreement between the Provost Marshal General and the Air Provost Marshal creating the Army-Navy-Air Force Personnell Security Board, Mar. 17, 1948, in *Commission Report* at 239.

[8] Previously informal programs had been utilized. During World War II a program was operated under the Provost Marshal General of the Army. When investigation revealed good cause to suspect the employee of subversive activity, the military authority could request his removal from the defense plant. An effort was made to accomplish this with the voluntary cooperation of management and labor. It was not required that the nature or the source of the evidence against the employee be disclosed. *Commission Report* 237, 238. At least one case arising under this program reached the courts and was decided in favor of the Government. Von Knorr v. Miles, 60 F. Supp. 962 (D. Mass. 1945), *vacated sub nom.*, Von Knorr v. Griswold, 156 F.2d 287 (1st Cir. 1946).

[9] 32 C.F.R. §§ 71-75 (1954), as amended, 32 C.F.R. § 71 (Supp. 1959). Also, in 1953 the Army-Navy-Air Force Personnel Board was abolished and replaced by Regional Industrial Security Boards in New York, Chicago and San Francisco. 32 C.F.R. § 67.2-3 (Supp. 1959).

[10] *Supra* note 2. This regulation further established one Industrial Personnel Security Screening Board, three Hearing Boards, and one Review Board.

[11] 32 C.F.R. § 72.33 (1954). Just as there are three levels of classification of defense information, so are there three corresponding levels of clearance: Confidential, Secret, and Top Secret, which authorizes the individual receiving the clearance to have access to classified information up to the level of his clearance. Procedures vary in the granting of the different types of clearance. The contractor can grant a Confidential clearance if the employee is a citizen of the United States, and there is no information known to the contractor which would indicate that the employee's access to the Confidential material is not clearly consistent with national security. For Secret and Top Secret clearances the contractor must request clearance from the Government through the military department. For a Secret clearance only a National Agency Check is required if the employee is a citizen of the United States. This consists of checking the employee's name with the Federal Bureau of Investigation, Assistant Chief of Staff, G-2, Department of the Army, Office of Naval Intelligence, Department of the Navy, Office of Special Investigation, Department of the Air Force and other appropriate government agencies. For a Top Secret clearance, the contracting military department, through its investigative agency, conducts a full background investigation of the employee from Jan. 1, 1937, or from the employee's 18th birthday to the present, whichever is the shorter period.

[12] *Commission Report* 262; Cushman, Civil Liberties in the United States 193 (1956).

[13] 32 C.F.R. § 67.4-3 (f)(2) (Supp. 1959).

[14] 32 C.F.R. §§ 67.4-5(a), (d) (Supp. 1959).

[15] *Ibid.*

[16] 32 C.F.R. § 67.1-4 (Supp. 1959).

[17] C.F.R. § 67.4-4(b) (Supp. 1959).

[18] 32 C.F.R. § 67.4-4(c) (Supp. 1959), which provides that the Board has only the power to request the attendance of individuals.

[19] 32 C.F.R. § 67.4-5(1) (Supp. 1959).

[20] Greene v. McElroy, *supra* note 5.

sults of the hearings were not published, there is very little information on the practical working of the program.[21] Few cases arising under the programs have reached the courts. Two of these cases were dismissed on procedural grounds.[22] Two cases reached the Supreme Court,[23] and one of these was dismissed as as moot[24] when the employee's clearance was restored by the Government.

(1) *Greene v. McElroy — The Factual Setting.*[25] Greene, an engineer, had worked since 1937 for Engineering and Research Corporation (ERCO), whose business consisted primarily of manufacture and development of mechanical and electronic products. Following a series of actions, revocation of Greene's security clearance was made final after a 1954 hearing before the Eastern Industrial Personnel Security Board.[26] At that time he held the position of Vice President in charge of Engineering at an annual salary of $18,000. After this revocation, Greene was discharged from his job since his company worked exclusively on classified government contracts. Thereafter, Greene was unable to obtain employment as an aeronautical engineer and was subsequently employed as a draftsman at an annual salary of $4,700.

The most complete Statement of Reasons was given to Greene, just prior to the 1954 hearing and it listed thirteen charges.[27] This Statement of Reasons included some, but not necessarily all, of the information used against Greene and purported to be only that information "disclosure of which is permitted by security considerations."[28] Presumably much of this information was developed during the course of a background investigation of Greene in accordance with security regulations then in effect and may have come from neighborhood acquaintances or fellow workers.

During the 1954 hearing Greene explained several of the more serious charges contained in the Statement of Reasons and produced several witnesses in

(*Continued on next page*)

[21] A selection of 50 cases arising under the various security programs of the Government is made available in YARMOLINSKY, CASE STUDIES IN PERSONNEL SECURITY (1955).

[22] Webb v. Wilson, Civil Action No. 22638 (E.D. Pa. 1957); Cohen v. Leone, 18 F.R.D. 494 (E.D. Pa. 1955). See also Dressler v. Wilson, 155 F. Supp. 373 (D.D.C. 1957).

[23] Green v. McElroy, *supra* note 5; Taylor v. McElroy, 360 U.S. 709 (1959).

[24] Taylor v. McElroy, *supra* note 23. Taylor lost his job when his security clearance was revoked in a proceeding similar to those involved in the *Greene* case. After the Supreme Court had granted certiorari to review a judgment sustaining that action, his security clearance was restored, and the Solicitor General assured the Court that Taylor then stood in the same position as others who had been granted clearance, that the evidence in his file would not be used against him in the future, and that the findings against him had been expunged.

[25] Joint Appendix to Briefs pp. 212-485, Greene v. Wilson, reported as Greene v. McElroy, 254 F.2d 944 (D.C. Cir. 1958) [hereinafter cited as Joint Appendix].

[26] Prior to 1950 Greene was granted clearance on three different occasions. His clearance was first revoked in 1951, but the Industrial Employment Review Board reinstated his clearance after a hearing in 1952. By a Department of Defense Directive of May 4, 1953, the Industrial Review Board was superseded by the Industrial Personnel Security Boards. During the interim the secretaries of the three military departments were authorized to review all pending cases. Commission Report at 248. After review of Greene's case, Secretary of Navy Anderson, on the basis of information contained in the file, revoked Greene's clearance. Joint Appendix at 2.

[27] The charges included the following: From 1942 to 1947 Greene was married to Jean Hinton Greene who allegedly was an ardent Communist during this time; that Greene regularly attended social functions at the Russian Embassy. Joint Appendix 213-215.

[28] 32 C.F.R. § 67.4-3(e) (Supp. 1959).

support of his position.[29] The Government produced no witnesses. The only "evidence" introduced by the Government was summary reports of investigative agents, included in the confidential file given to the Board.[30] There is every indication that the Board used evidence other than that given to Greene in the Statement of Reasons to determine his fitness for security clearance.[31] Moreover, the Board probably neither knew the identity of the informants, nor questioned them at any time.[32]

After Greene had exhausted his administrative remedies, he brought suit in a federal district court for a judicial declaration that the Defense Secretary's order denying him access to classified material was invalid. The district court granted the Government's motion for a summary judgment,[33] and the Circuit Court of Appeals affirmed.[34] The lower courts refused to inquire into the merits of Greene's contention that he was deprived of his livelihood without procedural due process such as the right to confront his accusers and to have access to confidential reports used against him.

(2) *The Greene Case—The Issues and Their Resolution.* The Supreme Court decided the case on the narrow issue that specific authorization from either the President or Congress is needed to operate an industrial security program in which an employee can be deprived of his job without the procedural safeguards of confrontation and cross-examination.[35] It is not clear whether specific authorization is needed for any industrial security program or only for a program denying the rights of cross-examination.[36] However, from the trend of the Supreme Court decisions, as well as in principle, it seems that any program for industrial security incorporating the procedures of the program then in effect should be declared unconstitutional. While the Court did not clarify the requirements of procedural due process in the industrial security field, it indicated its concern over the procedures in the previous program by its extensive discussion, throughout the opinion, of confrontation and cross-examination.[37]

III. Executive Order 10865

On February 20, 1960, President Eisenhower issued Executive Order 10865[38] authorizing the Secretary of Defense, among others, to limit access to classified information to those industrial employees whose access is clearly consistent with the national interest. It is a direct response to the Supreme Court's opinion in the *Greene* case that congressional or executive authorization would be needed for an industrial security program. Although the order does not delineate all procedures to be followed in a security program, it does set forth certain safeguards which must be afforded an individual in any industrial security hearing. It provides for cross-examination of Government witnesses by the employee, excepting confidential informants, witnesses who are unable to appear due to death, illness, or similar cause, and informants who are excepted for *good and sufficient reason.*

A. Purpose of the Order

The prime purpose is to authorize an industrial security program. However, at the very beginning it is stated, "it is a fundamental principle of our Government to protect the interests of individuals against unreasonable or unwarranted encroachment."[39] The foreword to the order recognizes the necessity for the United States to protect itself from unauthorized disclosures of classified information, but it is significant that the interests of the individual are made explicit, thus setting the tenor for the order, which deals exclusively with rights of the "applicant" to a fair hearing.

Under the order an applicant cannot be denied access to classified information unless he has been afforded a hearing at which he can be represented by counsel,[40] and during which he is permitted to cross-examine persons either orally or through written interrogatories.[41] The order, however, does set forth some restrictions on the right of cross-examination.[42] Although the previous program under Department of Defense Directive 5520.6 contained similar provisions for notice and hearing, and representation by counsel, it did not provide for cross-examination and

[29] During the 1954 hearing Greene explained that he had divorced his first wife in 1947, primarily because of their divergent political views. He testified that his contacts with the Russian Embassy were all business in nature, and this was supported by other witnesses who told of Greene's company's attempts to get Russian business during World War II. Joint Appendix 277-97.

[30] Greene v. McElroy, *supra* note 5, at 479, 480.

[31] *Id.* at 487.

[32] This is clear from the following testimony of Jerome D. Fenton, Director, Industrial Personnel Security, Department of Defense, before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, given on Nov. 23, 1955:

Q. What other type of evidence is received by the Hearing boards besides the evidence of persons under oath?
A. The reports from the various governmental investigative agencies.
Q. Can you tell me what kind of help is given to the hearing board in these reports with respect to the matter of evaluation? What is the nature of the evaluation that is used for this purpose?
A. Well, each board has a person who is called a security advisor, who is an expert in that particular area. Each screening board has one, and those individuals are well-trained people who know how to evaluate reports and evaluate information. They know how to separate the wheat from the chaff, and they assist these boards.
Q. This expert, then, has to take the report and make his own determination in assisting the board as to the reliability of a witness that he has never seen, or perhaps hasn't even had the opportunity to see the person who interviewed the witness?
A. Well, he has nothing to do with the witness; no.
Q. What is that?
A. He has not interviewed the witness; no.

Hearings on S. Res. 94 *Before a Subcommittee of the Senate Committee on the Judiciary*, 84th Cong., 2d Sess. 623-624 (1955).

[33] 150 F. Supp. 958 (D.D.C. 1957).

[34] 254 F.2d 944 (D.C. Cir. 1958).

[35] Greene v. McElroy, *supra* note 5 at 493.

[36] "Whether these procedures under the circumstances comport with the Constitution we do not decide. Nor do we decide . . . what the limits on executive or legislative authority may be." Greene v. McElroy, *supra* note 5, at 508.

[37] Mr. Justice Harlan recognized this in a concurring opinion: "[I]t unnecessarily deals with the very issue (constitutional issue) it disclaims deciding." Greene v. McElroy, *supra* note 5, at 509.

[38] Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960).

[39] Foreword to Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960). Compare, Foreword to Exec. Order No. 10450, 18 Fed. Reg. 2489 (1953), for the Federal Civilian Employee Loyalty Program, which said in part: "[A]ll persons . . . privileged to be employed in . . . Government be adjudged by mutually consistent and no less than minimum standards and procedures . . . ."

[40] Section 3(5), Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960).

[41] Section 3(6), Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960).

[42] Section 4, Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960).

confrontation of government witnesses.[43] A section of the prior program which outlined the order of the hearings did mention that government witnesses, *if any*, would appear first.[44] However, since this program excepted from disclosure all confidential informants,[45] the usual practice was that no government witnesses testified at the hearing.[46]

An effect of this procedure was to put the burden of proof on the employee to show he was entitled to clearance. To accomplish this, he had to rebut information which was never disclosed to him. In direct departure from this prior procedure, the order can be read as a general directive that the department concerned should present witnesses and documents tending to prove that clearance should be denied or revoked. Supporting this interpretation is the fact that the order deals exclusively with the rights of the employee to confrontation, and the strong statement in the order that the interests of the individual must be protected. Further the order provides that every effort must be made by investigative agencies to bring forth witnesses, as well as stating that if a witness is an employee of the federal government, his department must make every effort to have him at the hearing. The limitations on cross-examination must be read with the tenor of the Executive order in mind.

B. Cross-Examination of Regularly Established Intelligence Personnel

Provision is made for protecting the identity of the "confidential informant who has been engaged in obtaining intelligence information for the Government," if such "disclosure would be substantially harmful to the national interest."[47] Such a determination must be made by the head of the department supplying the information, and must be certified by him to the department or person conducting the hearing. This provision definitely includes the "undercover" agent, and probably will include all governmental intelligence agents.

A finding that disclosure would harm the national interest would be tantamount to a claim, in the courts, of governmental privilege based on national security. It is a well-established rule that this privilege will be honored,[48] but this does not usually relieve the Gov-

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[43] 32 C.F.R. § 67.1-4 (Supp. 1959).

[44] 32 C.F.R. § 67.4-5(g) (Supp. 1959).

[45] 32 C.F.R. § 67.1-4 (Supp. 1959).

[46] A collection of cases in YARMOLINSKY, CASE STUDIES IN PERSONNEL SECURITY (1955) indicates that in most cases the Government presents no witnesses. One writer has stated: "Many find it hard to believe that the national security requires the Government *never* to reveal the identity of *any* accuser." (All italicized in original.) CUSHMAN, CIVIL LIBERTIES IN UNITED STATES 193 (1956).

[47] Section 4(a)(1), Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960).

[48] United States v. Reynolds, 345 U.S. 1 (1953). See Sanford, *Evidentiary Privileges Against the Production of Data Within the Control of the Executive Department*, 3 VAND. L. REV. 73 (1949).

New Procedure (*Continued*)

ernment of proving its case by other witnesses. Whether the Government will have to support its position with other non-secret testimony in security hearings is not certain. As noted previously, the tenor of the order is that the Government must do so.

It is submitted that the order would more effectively protect the interests of an individual if the term "confidential informant" were qualified by the phrase "regularly established." This is the terminology used by the Commission on Government Security,[49] and refers to only those agents who are full-time employees of the government investigative agencies. Confidential informant could include lay "stool pigeons" sometimes used by investigators.[50] J. Edgar Hoover has indicated that the FBI would treat these lay informants as confidential informants within the scope of the present provision.[51]

On the other hand, the necessity under this provision that a finding must be made that disclosure of a confidential informant would endanger the national security might prevent abusive use of the provision to cloak in secrecy neighbors or fellow workers of the employee. Further, an agent who has left undercover work might even be called to testify under the limitation of this section.

It will be necessary to await actual operation of the new program to see how this provision will work, but it appears that the order, at least in this section, affords greater protection to the employee than the past program.

C. Further Limitations on the Right of Cross-Examination

The Executive order further provides that the applicant will not be allowed to cross examine those persons who are unable to appear due to death, severe illness, or similar cause. In addition, an informant will be excepted from cross-examination for a cause determined by the head of a department to be *good and sufficient.* However, before information from any of these excepted sources can be considered by the hearing officer or board, the head of the department or his special designee must determine that such information appears accurate, reliable, and material, and that failure to consider it would be substantially harmful to the national security. A determination of non-disclosure under these exceptions is not based on the privilege of national security, in contrast to section 4 (a) (1), relating to confidential informants.

When the person does not appear as a witness because of death, illness or similar cause, his identity

[49] *Commission Report* 658. The Commission has recommended: "Confrontation of regularly established confidential informants engaged in obtaining intelligence . . . information for the Governmnt should not be allowed where the head of the investigative agency determines that the disclosure of the identity of such informants will prejudice the national security." *Commission Report* at 66. The Commission further recommended that derogatory information from lay informants should not be considered unless the informant was subject to cross-examination by the employee. *Commission Report* at 67.

[50] For a discussion of informants, see BONTECOU, THE FEDERAL EMPLOYEE LOYALTY PROGRAM 132 (1953); EMERSON AND HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 611 (1958).

[51] Statement of J. Edgar Hoover to Loyalty Review Board (operating under Exec. Order No. 9835), 1947, in *Commission Report* at 657.

as well as the information he supplied must be made known to the applicant.[52] It is submitted that the applicant should be allowed to introduce testimony bearing on any matter which might affect the reliability and veracity of this information, although the order does not so provide. Such a provision would protect the applicant from an adverse security determination based on information supplied by malicious persons who held a grudge against him. The exceptions of death, illness, or similar cause would appear to be reasonable, although it is not clear what "similar cause" might include. Because of its conjunction with death or severe illness it might possibly be restricted to other physical disabilities.

The exception to cross-examination for a cause determined to be *good and sufficient* by the head of the department[53] may well prove to be an escape clause allowing all informants to be cloaked in secrecy. Significantly, if an informant is not subjected to cross-examination under this exception the order does not provide that his identity or the information supplied must be made known to the applicant. This provision is so broadly worded that it seems impossible to enumerate all the informants who might be included within its terms. However, it might include the person who discloses information to the investigative agency only upon the assurance that he will not be identified or required to appear at a hearing.[54] The reliability of the information from a person who is reluctant to meet the applicant face to face is questionable.

The Government has argued that sources of information would be fewer if supplying derogatory information meant that the informant would have to testify openly at a hearing.[55] The answer to this argument has been that anonymity "is an open invitation to scandal mongers, crackpots, and personal enemies"[56] to supply derogatory information. Perhaps the most effective refutation of the reliability of this type of information has been President Eisenhower's famous Abilene Code:

> In this country, if someone dislikes you or accuses you he must come up in front. He cannot hide behind the shadow. He cannot assassinate you or your character from behind, without suffering the penalties an outraged citizenry will impose.[57]

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[52] Section 4(a)(2)(A), Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960).

[53] Section 4(a)(2)(B), Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960).

[54] The investigative agencies wish to honor the condition of confidence imposed by the informant:

> The third type of informant is the nextdoor neighbor or fellow employee . . . . [I]f that person says he wants to be kept confidential we must not use his name. . . . Now the only other [sic] alternative . . .we will instruct our agents before they go into interview that they advise the person that anything he says he must be prepared to testify to. I frankly don't believe we will get any information in that way. . . . J. Edgar Hoover, appearing before the Loyalty Review Board, *supra* note 51.

[55] Brief for Respondents, p. 106, Peters v. Hobby, 349 U.S. 331 (1955).

[56] Statement of American Jewish Congress to Commission on Government Security (1957), reprinted in part in *Commission Report* at 662.

[57] Remarks of President Eisenhower on receiving America's Democratic Legacy Award at the 40th Anniversary Dinner of the Anti-Defamation League, Nov. 23, 1953, quoted in Mr. Justice Frankfurter's dissenting opinion in Jay v. Boyd, 351 U.S. 345, 373 (1955).

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At a later time, President Eisenhower, in a press conference, indicated that the identity of undercover agents should not be disclosed.[58]

The application of this clause would probably be restricted by the courts to exceptional situations, not covered by other provisions of the order. In *Joint Anti-Facist Refugee Committee v. McGrath,*[59] the Supreme Court held that the intent of an Executive order authorizing the Attorney General to establish a listing of subversive organizations indicated that a hearing was necessary before an organization's name could be placed on the list, even though, the order did not specifically provide for a hearing. In two cases under the Federal Civilian Employee Loyalty Program,[60] the Supreme Court has strictly construed the Executive order involved. In *Peters v. Hobby,*[61] the Executive order was read as limiting the review of an appeal board to determinations which denied clearance. One effect of the Court's decision in *Cole v. Young*[62] was to restrict application of the federal loyalty program to sensitive positions in Government.

The intent of the present Executive order seems quite clear. The order states that the interest of individuals must be protected against unreasonable encroachment by the Government. Further, the order provides that so far as national security permits the investigative agency must cooperate in identifying and making available for cross-examination all informants.[63] In addition, if the informant is an employee of the Government, his department must cooperate in making him available as a witness.[64] The order clearly grants the applicant a reasonable right of cross-examination which would not be accomplished if the department heads included within the *good and sufficient* provision all other informants not specifically provided for. The purpose of this order is more readily apparent when it is contrasted with prior industrial security programs which denied any right of cross-examination. If the President intended to continue that program he would not have been so forceful in instructing department heads to make informants available for cross-examination.

In examining the order's provisions for cross-examination it must be remembered that the hearing boards do not have power to subpoena witnesses, but can only request them to appear at the hearing. This may diminish the effectiveness of the order's provisions for confrontation. However, it would be necessary for Congress to grant subpoena power to the hearing boards. For example, the Atomic Energy Commission has been authorized by statute to issue subpoenas in connection with its security investigations.[65] Following the Supreme Court decision in *Greene v. McElroy,*[66] several bills were introduced in Congress to provide for an industrial security program.[67] One of these bills[68] provided that the hearing officer might issue subpoenas to compel the attendance of witnesses or production of other evidence. It is submitted that congressional action to provide subpoena power should be taken to secure the individual an effective right of cross-examination.

D. Parallels to the Revised Port Security Program

Prior to the decision in *Parker v Lester,*[69] Coast Guard regulations provided that the Commandant of the Coast Guard could deny access to any port, by not issuing a credential card, to any person whose character and habits of life were inimical to the interests of the United States.[70] If a seaman or waterfront worker is denied entry to a port area, he is unable to follow his chosen trade,[71] and is effectively denied any rights to private employment. Under the initial Port Security Program, the seaman was granted a hearing, but he was not informed of adverse evidence, nor confronted with any witnesses.[72] As these provisions were similar to the previous industrial security program, so were other features of the port security system.[73] However, the authority of the Commandant of the Coast Guard to deny access to suspect individuals was derived not only from departmental regulations, but also from statute,[74] implemented by an Executive order,[75] in contrast to the prior industrial security program.

The 9th Circuit Court of Appeals decision in *Parker v. Lester*[76] declared the Port Security Program then in operation unconstitutional. The basis for the decision was that the security determinations must afford the seaman procedural due process, as he had a right to private employment. The court held that not informing the seaman of adverse evidence and the identity of informants was denial of due process.[77]

[58] N. Y. Times, Mar. 17, 1955, p. 18, col. 5.

[59] 341 U.S. 123 (1951).

[60] Cole v. Young, 351 U.S. 536 (1956); Peters v. Hobby, 349 U.S. 331 (1955).

[61] *Supra* note 60.

[62] *Supra* note 60.

[63] Section 6, Exec. Order No. 10865, 25 Fed. Reg. 1583 (1960).

[64] *Ibid.*

[65] 68 Stat. 921 (1954), 42 U.S.C. 2201 (c) (1958).

[66] 360 U.S. 474 (1959).

[67] S. 2314, 86th Cong., 1st Sess. (1959); S. 2392, 86th Cong., 1st Sess. (1959); S. 2416, 86th Cong., 1st Sess. (1959); H.R. 6866, 86th Cong., 1st Sess., (1959); H.R. 8121, 86th Cong., 1st Sess. (1959).

[68] S. 2314, 86th Cong., 1st Sess. (1959).

[69] 227 F.2d 708 (9th Cir. 1955).

[70] 15 Fed. Reg. 9327 (1950).

[71] See discussion on this point in Brown and Fassett, *Security Tests for Maritime Workers: Due Process under the Port Security Program,* 62 YALE L.J. 1163, 1164, 1174-75 (1953).
Under the Industrial Security Program an employee is denied access to classified data. It is possible that he could continue working for his employer in a job that did not involve classified data. In a great many situations, however, the entire plant, such as an electronics firm, will be working with classified data. Also, because of the nature of their field, nuclear physicists, or aeronautical engineers, often can not follow their calling without security clearance.

[72] 15 Fed. Reg. 9327, 9329, §§ 121.23(c), 121.29(c) (1950). See, Brown and Fassett, *supra* note 71, at 1178.

[73] For a complete review of the standards, screening, and review procedures of the Port Security Program, see Brown and Fassett, *supra* note 71, at 1174-1182.

[74] 64 Stat. 427 (1950), 50 U.S.C. § 191 (1958).

[75] Exec. Order No. 10173, 15 Fed. Reg. 7005 (1950).

[76] 227 F.2d 708 (9th Cir. 1955).

[77] The Solicitor General's decision not to appeal the *Parker* case may indicate that the Government thought the seaman should have an opportunity to meet adverse evidence. Davis, *Requirement of a Trial-Type Hearing,* 70 HARV. L. REV. 193, 239 (1956). However, after the decision in *Parker*, the Government did not want to give clearance to the seamen plaintiffs, but desired to keep their status in abeyance until the seamen could be screened under new regulations. The decree finally entered by the court contained the following proviso to be put on the questioned seaman's validated documents: "issued pursuant to decree of United States Court for the Northern District of California, July 12, 1956, and to be given the same effect as all similar documents issued without such order." Lester v. Parker, 235 F.2d 787, 789 n.1 (9th Cir. 1956).

Subsequent to this decision, the Port Security regulations were changed to afford greater protection to seamen. Among the new provisions were the following: (1) initial notice denying clearance shall include pertinent information as to names, dates and places in such detail as to permit reasonable answer; (2) applicant may cross-examine any witness offered in support of such denial; (3) every effort should be made to produce material witnesses to testify in support of the reasons set forth in the Notice of the Commandant, in order that such witnesses may be confronted and cross-examined by the applicant or holder.[78]

Although the Port Security Program contemplates that some information will not be disclosed to the applicant, the regulations do not provide any standards for determining what information is confidential and what information can be disclosed. The Executive order for a new industrial security program details the standards to be used in deciding what information or witnesses must remain confidential. Further, the order provides that final denial of clearance shall include a statement of reasons, and the decision of each hearing officer, as to each allegation, while the revised Port Security regulations are silent on this point.[79]

Few facts are presently available on the operation of the new Port Security regulations.[80] At least one case under the new system has reached the courts, but it involved the relevancy to a denial of a credential card of a seaman's refusal to answer questions on the application for a card.[81] The development of the Port Security problems does show that apparently a security check can be operated even if the Government must reveal some sources of information. Experience with the revised Port Security regulations affording limited confrontation undoubtedly encouraged the Executive to design a new industrial security program allowing even greater protection to the individual.

IV. The Requirement of Procedural Due Process in Security Hearings

The main issue in loyalty-security hearings has been the use of confidential informants. Whether procedural due process requires that an employee be apprised of all adverse evidence has not been decided. While use by the Government of confidential reports and

(Continued on next page)

[78] 33 C.F.R. §§ 121.11(a), 121.15(c), 121.19(f), (Supp. 1959).

[79] 33 C.F.R. § 121.19(m) (Supp. 1959).

[80] Total figures for the applications for validated documents processed by the U. S. Coast Guard are as follows:

1950—	99,181 (four months)	1956—	24,276
1951—	169,458	1957—	29,565
1952—	69,673	1958—	17,777
1953—	43,263	1959—	19,968
1954—	23,308	1960—	7,975 as of April 30, 1960
1955—	22,299		

It can be observed that the initial program was handicapped by an exceedingly large number of applicants, all the then waterfront workers and seamen. From that time, it seems that only new workers have been applying for validated documents. Figures from the Office of the Commandant, U. S. Coast Guard, Washington, D. C.

[81] Graham v. Richmond, 272 F.2d 517 (D.C. Cir. 1959).

informants in criminal trials is not permitted,[82] a claim of executive privilege is allowed in civil actions between third parties[83] or where the Government is the defendant.[84] Admittedly, the criminal rationale that it is unfair to begin prosecution of a defendant, and then withhold relevant information, is not applicable to civil cases. However, some courts have extended the criminal rule to administrative hearings.[85]

One measure for determining whether procedural due process is necessary in administrative hearings has been the right-privilege distinction. Supposedly, if the subject matter of the hearing involved a constitutionally protected right of the individual, procedural due process was necessary. The converse would be applicable if the subject matter is only a privilege.[86]

It is a settled question that the right to private employment is constitutionally protected. In 1915 the Supreme Court in *Truax v. Raich*[87] said:

> It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure.[88]

In certain respects this statement was dictum. However, the Court cited this case in *Greene v. McElroy*[89] as holding there was a right to private employment.

A more affirmative decision on this point is *Parker v. Lester*.[90] As noted previously, seamen who were denied identification cards for entrance to a port area under the Port Security Program were, in fact, denied the right to follow their chosen trade. The court had no difficulty in finding that the liberty of a seaman to follow his chosen employment was a right clearly entitled to constitutional protection.[91]

Using the right-privilege theory, it would then follow that procedural due process is essential in industrial security hearings. The Executive order provides all essential elements of due process, except for allowing limited use of confidential reports.[92] However, in cases involving national security interests, it appears that the right-privilege dichotomy has not been the measure, but that the Court has measured the harm caused the individual by the loyalty determinations.[93] Reluctant to sweep aside security systems, the Court's procedure has been to administer de facto due process.

In *Bailey v. Richardson*,[94] it was held that since government employment was a privilege, Miss Bailey was not entitled to know the confidential information or sources used in deciding her security status. Yet in two later cases under the Federal Civilian Employee Loyalty Program,[95] the Court neither discussed whether public employment was a right or privilege, nor discussed the problems of procedural due process in security hearings. However, in both cases petitioners were granted the relief requested by a close reading of the applicable statutes, executive orders and regulations. While the security program was left intact, it was limited by *Cole v. Young*[96] to sensitive positions. In *Peters v. Hobby*,[97] the appeal procedure was limited to review of adverse decisions on the request of the employee.

Confidential reports on a person's subversive activities or character traits are used not only in loyalty-security determinations, but also in other administrative actions. The more significant of these other actions are immigration proceedings and passport denial hearings. While comparison of these latter proceedings to industrial security matters may be unwarranted,[98] the problems in all these situations are

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[82] In Roviaro v. United States, 353 U.S. 53 (1957), the Court held that a defendant was entitled to know the name of the informant used by federal narcotics agents, when such information was necessary to prepare his defense. Jencks v. United States, 353 U.S. 657 (1957) permitted a defendant to first examine confidential FBI reports for purposes of cross-examination of FBI agents. A statute passed by Congress following this decision provides that the presiding judge shall first examine the reports for relevancy. 18 U.S.C. § 3500 (1958). See also United States v. Beekman, 155 F.2d 580 (2d Cir. 1946); United States v. Andolschek, 142 F.2d 503 (2d. Cir. 1944).

[83] Boske v. Comingore, 177 U.S. 459 (1900). See Sanford, *Evidentiary Privileges Against the Production of Data Within the Control of Executive Departments*, 3 VAND. L. REV. 73 (1949).

[84] United States v. Reynolds, 345 U.S. 1 (1953); Totten v. United States, 92 U.S. 105 (1875); Bank Line Ltd. v. United States, 163 F.2d 133 (2nd Cir. 1947); Cresmer v. United States, 9 F.R.D. 203 (E.D.N.Y. 1949). See also 25 Ops. Atty Gen. 326 (1905); Sanford, *supra* note 83.

[85] In Communist Party v. Subversive Activities Control Board, 254 F.2d 314 (D.C. Cir. 1958), it was stated at 328:

> The opinion of the Supreme Court in the Jencks case, as we read it, is based upon the elementary proposition that the interest of the United States is that justice be done. The same elementary proposition applies here and leads to the same result.

See United States v. Jacobson, 154 F. Supp. 103, 106 (W. D. Wash. 1957).

[86] Davis, *supra* note 77, at 222-62.

[87] 239 U.S. 33 (1915). On the other hand, it has been held that Government employment is a privilege. McAuliffe v. Mayor, City of New Bedford, 155 Mass. 216, 29 N.E. 517 (1892). See *The "Right" to a Government Job*, 6 RUTGERS L. REV. 451 (1952).

[88] Truax v. Raich, *supra* note 87, at 41.

[89] *Supra* note 66, at 492.

[90] *Supra* note 69.

[91] In another recent case involving a federal loyalty security program, it has been determined that the federal government can deny entrance to federal property, in this instance a naval installation, without a hearing. However, this problem is more closely analogous to the problems of the Federal Civilian Employee Loyalty Program than to situations where the Government is interfering with the relationship of private employer and his employee. Cafeteria Workers v. McElroy, No. 14689, D.C. Cir., April 14, 1960, *reversing on rehearing* No. 14689, D. C. Cir., Aug. 21, 1959. On the earlier decision, see 28 GEO. WASH. L. REV. 653 (1960).

[92] Essentials of a hearing are: (1) An opportunity must be given to explain or rebut any adverse evidence; (2) adverse evidence must be made known to the party in interest; (3) cross-examination of adverse witnesses must be afforded; and (4) findings must be based on evidence submitted at the hearing. Reilly v. Pinkus, 338 U.S. 269 (1949); Morgan v. United States, 304 U. S. 1 (1938); Ohio Bell Tel. Co. v. Public Utilities Commission, 301 U.S. 292 (1937); Southern Ry. v. Virginia, 290 U.S. 190 (1933).

Executive Order 10865 allows the applicant to present all relevant information. Since the order provides for cross-examination, with certain exceptions, not only would the third principle listed above be complied with, but also the applicant would be apprised of evidence adverse to him, and the findings of the hearing officer or board would probably be based on the evidence sumitted at the hearing. Inasmuch as the order excepts some information from disclosure and cross-examination, in some cases the last three principles would not be fulfilled.

[93] For a discussion of the dissolution of the right-privilege dichotomy, see Brown & Fassett, *supra* note 71, at 1192; Davis, *supra* note 77, at 222-33.

The Court termed the injury caused by loyalty hearings a "badge of infamy" in Wieman v. Updegraff, 344 U.S. 183 (1952), referred to in Peters v. Hobby, *supra* note 60. In Joint Anti-Fascist Refugee Committee v. McGrath, *supra* note 59, at 141, the Court noted a "right of a bona fide charitable organization to carry on its work, free from defamatory statements." In Greene v. McElroy, *supra* note 66, at 493 n. 22, the Court recognized the "substantial injuries" caused Greene by the Government's action. See also 100 U. PA. L. REV. 274 (1951).

[94] 182 F.2d 46 (D.C. Cir. 1950), *aff'd by an equally divided court*, 341 U.S. 918 (1951).

[95] Cole v. Young, *supra* note 60; Peters v. Hobby, *supra* note 60. For other cases treated similarly, see Service v. Dulles, 354 U.S. 363 (1957); Kutcher v. Higley, 235 F.2d 505 (D.C. Cir. 1956); Burrell v. Martin, 232 F.2d 33 (D.C. Cir. 1955); Kutcher v. Gray, 199 F.2d 783 (D.C. Cir. 1952); Deak v. Pace, 185 F.2d 997 (D.C. Cir. 1950).

[96] *Supra* note 60.

[97] *Supra* note 60.

[98] The comparison may be unwarranted since entrance to the United States has been termed a privilege, United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950), and a matter of legislative grace, Shaughnessy v. United States *ex rel.* Mezei, 345 U.S. 206, 216 (1953), while the industrial security program infringes on the right to private employment. Although the right to travel has been held a "liberty," Shachtman v. Dulles, 225 F.2d 938, 941 (D.C. Cir. 1955), it would seem to be more tenuous than the right to work.

related to the right-privilege dichotomy, and procedural due process in administrative hearings. Similarly it seems that the Court has used the same method in determining all these matters. The problems have been approached not from the viewpoint of rigid rules, but through a process of weighing the harm caused the individual against the danger to national security.[99] However, in most of these matters the Court has left intact the security procedures which protected confidential informants, but nevertheless granted relief to the individual petitioners.[100]

The withholding of confidential FBI reports, which were used as "evidence," has been sanctioned in one administrative action.

In *United States v. Nugent*,[101] the Court held that an applicant for conscientious objector draft exemption has no right to inspect the FBI reports on his background during a Department of Justice hearing. However, this hearing did not end in a final decision on the applicant's status, but only in a recommendation to the Selective Service Appeal Board. In addition, the draft exemption is not a matter of right,[102] but of legislative grace,[103] while it seems settled that there is a constitutionally protected right to work. The court in *Nugent* held that the applicant for draft exemption was entitled to only a "fair resumé" of the confidential FBI reports. The Court has followed the *Nugent* holding in a subsequent similar case, *Simmons v. United States*.[104] Here the Court defined "fair resumé" as a statement so detailed that the applicant will be able to rebut it.

While in all of these cases the various security systems of the federal government have been left intact, and the identity of the informants has been protected, no definite guidelines for what constitutes procedural due process in security determinations have been laid down. Relief has been granted in cases where the Court decided it was warranted, without examination of the rights or privileges involved. Although the rationale for the criminal rule is not applicable to

(*Continued on next page*)

[99] In alien or resident alien proceedings, the Court has permitted the use of undisclosed material in proceedings which denied entry to a war bride and in proceedings which excluded a one-time resident alien who had left this country for 19 months. United States *ex rel.* Knauff v. Shaughnessy, *supra* note 98; Shaughnessy v. United States *ex rel.* Mezei, *supra* note 98. However, the Court has held that confidential use of the Attorney General's list of "unsavory characters" as a basis for a determination in deportation hearings creates an arbitrary presumption. Here the alien, admittedly within this country illegally, had to prove the alleged use of the list. United States *ex rel.* Accardi v. Shaughnessy, 347 U.S. 260 (1954).

[100] In recent passport cases the Court has struck down the passport denial procedures as unauthorized, just as in Greene v. McElroy, *supra* note 66, it put aside the industrial security program as unauthorized. Kent v. Dulles, 357 U.S. 116 (1958); Dayton v. Dulles, 357 U.S. 144 (1958). Although the *Kent* case involved the use of standards which might deny first amendment rights, the *Dayton* case concerned the use of confidential reports and informants. The confidential evidence remained secret, but Kent, Briehl, and Dayton all received passports. See *Beliefs, Associations, and Passports: Recent Cases and Proposed Legislation*. 27 GEO. WASH. L. REV. 77 (1958).

[101] 346 U.S. 1 (1953). See discussion of this case in Brown and Fassett, *supra* note 71, at 1194.

[102] 346 U.S. at 9.

[103] The Court in the *Nugent* case, *supra* note 101, at 9-10 found the conscription power to be part of Congress' war power, and implied that Congress, as a matter of grace, allowed exemption for conscientious objectors. *Accord*, United States v. MacIntosh, 283 U.S. 605, 623-24 (1930).

[104] 348 U.S. 397 (1955).

security hearings, it seems unduly harsh to require only the fair resumé as set forth in the *Nugent* case. Indeed, the Court in the *Greene* case indicated that more than a fair resumé would be needed, at least in industrial security hearings.

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where government action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. . . . [The] Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases . . . but also in all types of cases where administrative and regulatory action were under scrutiny.[105]

Since the *Greene* case was the zenith of a long line of cases pointing up the conflict between security interests and an individual's interest, the language from the opinion above will be looked to for acceptable standards. One interpretation might be that the Government must present sufficient evidence to prove its case, as well as sufficient evidence to enable the suspect to prepare a defense. Undoubtedly, the Court will, in future cases where confidential reports, or security matters are involved, determine each case on an *ad hoc* basis. Certainly, the Court will closely examine any security program to see what measure of protection it affords the individual. If sufficient protection is found, though not strictly conforming to due process standards, the form of the hearing, and probably a limited use of confidential reports will be upheld.

[105] Greene v. McElroy, *supra* note 66, at 496.

V. Conclusion

The order does contain some questionable sections, such as the exception to cross-examination for reasons found to be "good and sufficient." Under this provision the department heads could continue the inadequacies of the past programs. Since the tenor of the Executive order is to provide a substantial factual record by granting the employee a limited right of confrontation, the order should meet with judicial approval. The significance of the order lies in the attempt of the Executive department to define acceptable limits and procedures in this difficult constitutional area.

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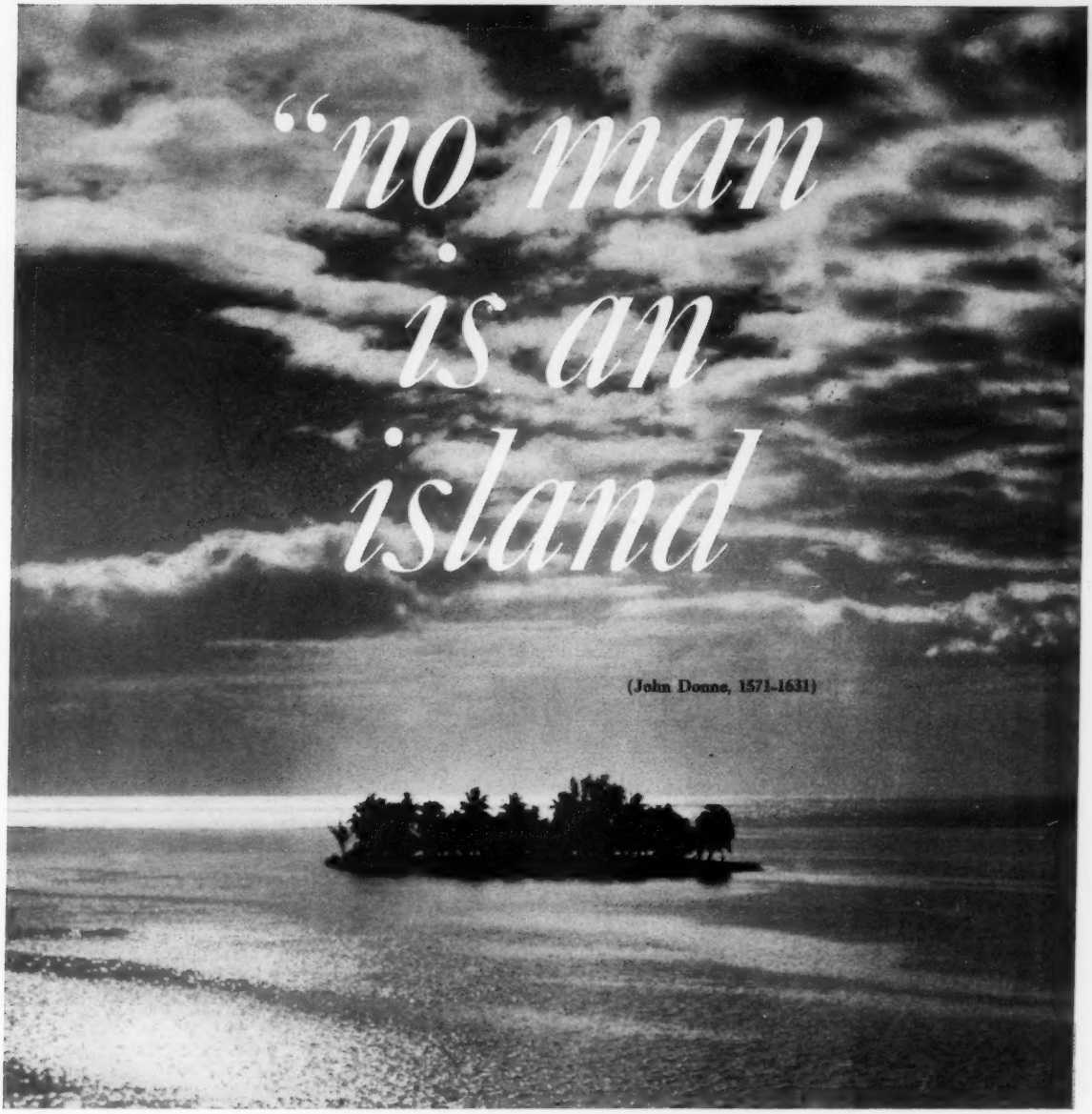

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